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The lawyer's and clerks' assistant

William Lansing



THE
LAWYERS' AND CLERKS' ASSISTANT.

BEING

*FORMS OF LEGAL INSTRUMENTS, BUSINESS
AND CONVEYANCING,*

AND IN

STATUTORY PROCEEDINGS,

FOR THE USE OF

LAWYERS AND THEIR CLERKS, BUSINESS MEN AND
PUBLIC OFFICERS.

AND INCLUDING

*Forms under the recent General Statutes of New York, relating to Corporations,
Excise, Highways and Towns, and of proceedings under the
Condemnation Law, and for the Sale of
Property of Corporations.*

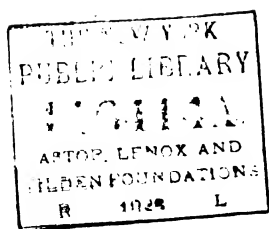
WITH NOTES AND REFERENCES TO THE STATUTES AND DECISIONS
TO WHICH SUCH FORMS ARE APPLICABLE.

BY

WILLIAM LANSING,
COUNSELLOR AT LAW.

NEW YORK :
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1898.
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PREFACE.

THE usefulness and importance of "The Clerk's Assistant," a well known work, containing forms of legal instruments, business, conveyancing and in statutory proceedings, with notes and references to authorities, has been fully demonstrated; but no revised edition of such a book has been recently published. The copyrights of those at present in use, bear date many years ago. During that period, however, many and important amendments have been made, throughout the United States, to the statutes relating to the subjects usually embraced therein, and new statutes upon those subjects have been passed, both by the older States, of which the recent legislation of the State of New York in revision of its statutes, is a striking illustration, and by the new States and Territories which have been admitted to the Union.

The members of the legal profession and their clerks, business men, public officers and all other classes interested in such a publication, have a right, therefore, to expect a new book of the description above mentioned, bringing the forms and notes to the present time.

It is to meet this emergency that this volume has been prepared, much labor and care having necessarily been expended upon its preparation.

It is offered to the public as containing accurate and practical forms, with full and reliable notes thereto, upon

the subjects to which they relate, as indicated upon its title-page.

If it shall be so fortunate as to meet the approval of the very large class of persons for whose use it is designed, and to whom such a work has become practically a necessity, the purpose of the author will have been accomplished, and his labors amply rewarded.

WILLIAM LANSING.

ALBANY, *December*, 1892.

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Forms of Business, Conveyancing, Etc.

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No. 1.

Notice of abandonment of vessel and cargo.

To the President, Directors and Company, of the — Insurance Company:

WHEREAS, By a policy of insurance, dated at —, on the — day of —, 1—, numbered —, you insured the sum of — dollars on my interest in the ship — (or, on merchandise on board the ship — from B. to L., or, on freight to be earned by the ship — from B. to L., or, otherwise sufficiently describing the subject of the policy), against the perils therein described; and the said ship on the voyage therein described, on or about the — day of — last, has been cast away (or, has struck upon a rock; or, has run on shore at a place called —), and the interest so insured has thereby become greatly damaged, to more than one-half the value thereof¹, and is totally lost to me:

You will, therefore, please to take notice that I hereby abandon to you all my right, title, interest, property and

1. A notice of abandonment to the underwriters of a marine policy will not support a claim for a constructive total loss, unless it states in such terms as to render the infer-

ence clear, that the damages exceed half the value of the subject insured. (McConochie v. Sun Mutual Ins. Co., 26 N. Y. 477.)

claim, in and to the said ship (or, the said merchandise ; or the said freight), and every part thereof ; and I demand of you the sum of — dollars, underwritten by you upon the same, as for a total loss thereof.²

Dated at B., —, 1 —.

C. B.

2. See *Dickey v. N. Y. Insurance Co.* (4 Cow. 222, aff'd, 3 Wend. 658); *Depau v. Ocean Ins. Co.* (5 id. 63); *Buchanan v. Ocean Ins. Co.* (6 id. 319); *Ruckman v. Merchants' L. Ins. Co.* (5 Duer, 342); *Radcliff v. Coster* (Hoffm. 98); *Suydam v. Marine Ins. Co.* (1 Johns. 181); *Smith v. Steinbach* (2 Cai. Cases, 158); *McConochie v. Sun Mut. Ins. Co.* (26 N. Y. 477, rev'g S. C., 3 Bosw. 99); *Saurez v. Sun Mutual Ins. Co.* (2 Sandf. 482); *Avery v. N. Y. Mut. Ins. Co.* (32 N. Y. State Rep. 116); *Hughes v. Sun Mutual Ins. Co.* (100 N. Y. 58); *Comegys v. Vasse* (1 Pet. U. S. 193), as to general principles relating to abandonment ; also section 1 of chapter 442 of Laws of N. Y. of 1867.

The notice in *McConochie v. Sun Mutual Ins. Co.* (cited *supra*) was addressed to the president of the defendants, and was in these words, viz.: Dear Sir: Understanding that the bark M. L. Frank, on her voyage from Matanzas to New York, has been compelled to seek the port of Savannah, in distress, where she arrived, we hear, with several feet of water in her hold, the cargo was landed and found very seriously damaged ; we, therefore, hereby abandon to you two hundred and eighty hogsheads sugar, valued at \$85 per hhd., insured by you under our open policy, No. 29,179 for \$23,800, and shall claim for a total loss. (Signed) "Alex. McConochie & Co.," which notice was held to be defective as above stated.

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Forms of Abstracts of Title to Real Property.

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3. Abstract of title, another form.
4. Abstract of title, another form, property passing through partition proceedings, and proceedings for sale of infant's property.
5. Abstract of title, another form, title obtained through sheriff's sale under execution, issued upon judgment.

No. 2.

Abstract of title, general form.

Abstract of title¹ to property on the — side of — street in the (city) of —, known by the street number — — street, conveyed by J. F. as trustee and executor of E. F., deceased, to M. N., and by said M. N. and R. N., his wife, to T. G. on the — day of —, 1—.

The title is assumed to have been perfect in G. C., on the — day of —, 1—, to said premises. Deeds are in exist-

1. An abstract, or as it is sometimes called, a brief of title, is defined as an abridgment of all the patents, deeds, indentures, agreements, records and papers relating to certain real estate. In making an abstract of title, the practitioner should be careful to place every deed and other paper in chronological order. The date and time and place of record of each deed, etc., the names of the parties, the consideration, the description of the property, should be particularly noticed, and all covenants, charges, etc., should be inserted or referred to.

ought to have his title investigated, abstracted, and evidence in proof of it ready to be produced and established before he sells; for if he sells with a confused title, or without being ready to produce deeds and vouchers, he must be at the expense of clearing it. (1 Chit. Pr. 304, 463; Bouv. Law Dict., tit. "Brief of Title.")

In the above and other forms of abstracts contained in this chapter, it is attempted to give the manner in which the more usual links in the chain of a title are accustomed to be set forth therein.

A vendor of an interest in realty

ence and recorded in — county clerk's office, showing title to said premises from —, 1—, the date of a deed thereof from J. E. to S. A.

| | | |
|---|---|--|
| 1. G. C. and M. C., his wife, to C. J. S. | } | Full covenant deed. Dated —, 1—. |
| | | Recorded —, 1—, in — county, in Book of Deeds No. —, at page —, — A. M. |

Consideration, \$—.

Conveys the lot and buildings thereon, situate in the — ward of the (city) of —, on, etc. (insert description from deed). Being the same premises described in a deed from S. A. by T. J., his attorney, to the said G. C., dated —, 1—, subject to a mortgage for \$—, part of the purchase-moneys of said premises, dated —, 1—.

Said mortgage (from said G. C. to S. A.) was recorded in — county clerk's office, in Book No. — of Mortgages, at page —, and was discharged by a certificate of satisfaction thereof, from the mortgagee, dated —, 1—, and recorded —, 1—, in Book No. — of Discharges of Mortgages, at page —.

2. C. J. S. died —, 1—, still owning said property and not having incumbered the same, leaving his last will and testament, dated —, 1—, which was proved and recorded as a will of real and personal estate, before the surrogate of — county, in which county he resided at the time of his death, with the codicil thereto, dated —, 1—, in Book of Wills, No. —, at page —, on the — day of —, 1—. He left him surviving his children F. S., C. L., wife of W. G. L., and M. M., widow of H. M., deceased, all of full age, his only heirs at law and next of kin, and his widow, E. S.

These all appear to have been cited to attend the probate of said will. (See Petition filed —, 1—, and proceedings thereupon.)

By article second of said will he gives and devises to W. G., as executor and trustee thereof and thereunder, all the

rest and residue of his estate, real and personal (in which is included the property conveyed to him, by deed No. 1).

He directs his said executor and trustee to sell the said property, conveyed to him by deed No. 1, being his dwelling-house and lot, at public or private sale, after three weeks' notice in two daily papers published in said city of —. Bequeaths \$— annually to his wife, during her widowhood, in lieu of dower, for the payment of which annuity a fund is set apart, and he increases this annuity by his codicil to \$—.

E. S., widow of C. J. S., died in or about the year 1—.

There is among the title papers above mentioned a release of dower, executed by said E. S., dated —, 1—.

Said W. G. was duly appointed and qualified as executor of said will by the said surrogate, on the — day of —, 1—. Letters recorded in Book — at page —.

- | | | |
|--|---|--|
| <p>3. W. G., as Executor of the Will of C. J. S., deceased, to B. W.</p> | } | <p>Deed covenant against grantor. Dated —, 1—. Recorded —, 1—, in Book No. — of Deeds, at page —, — county clerk's office, at — M.</p> |
|--|---|--|

Conveys the same premises, as such executor, in consideration of \$—.

It does not appear that any notice was given of this sale; but that such a sale would confer a good title upon the purchaser, see *Minuse v. Cox*, 5 Johns. Ch. p. 446.

- | | | |
|---|---|---|
| <p>4. B. W. and C. W., his wife, to B. E.</p> | } | <p>Warranty deed. Dated —, 1—. Recorded in — county clerk's office, at — M., in Book of Deeds No. —, at page —.</p> |
|---|---|---|

Conveys the same premises, in consideration of \$—.

Subject to two certain mortgages for \$— each, dated respectively —, 1—, recorded —, 1—, in Book No. — of Mortgages, at pages — and —, in — county clerk's office, upon which is due the principal thereof, and which the party of the second part assumes and agrees to pay.

Said first-mentioned mortgage was assigned to S. J., trustee of C. L., by the mortgagee, and was discharged —, 1—, by a satisfaction-piece executed by said assignee, dated —, 1—, recorded in Book No. — of Discharges of Mortgages, at page —. The secondly-above-mentioned mortgage was discharged by a satisfaction-piece executed by E. S., administratrix *de bonis non*, of, etc., of C. J. S., deceased, dated —, 1—, and recorded in — county clerk's office in Book No. — of Discharges of Mortgages, at page —, on the — day of —, 1—.

5. B. E. died —, 1—, being at the time of his death a resident of the city of —, in the county of —, leaving a last will and testament, dated —, 1—, which was proved and recorded in — county surrogate's office, — 1—, in Book No. — of Wills, at page —, as a will of real and personal estate.

He left, him surviving, his widow, L. E., and his children A. M., wife of J. M., L. B., wife of W. B., F. E. and B. E., his only heirs at law and next of kin, all of full age, and all of whom joined in the petition for the probate of said will, including the above-mentioned husbands of A. M. and L. B.

L. E., the widow of B. E., died —, 1—.

By this will the testator appointed the said B. E., J. M. and W. B. as executors thereof, who were duly appointed by the surrogate of — county as such executors, and they qualified as such, on or about —, 1—.

The said executors were authorized and empowered to sell and convey any and all his real estate, but it is provided that no sale shall be made, except by the joint act of the executors, or such of them as should assume the duties of executors.

| | | |
|--|---|---|
| 6. B. E., J. M. and W. B., sole Executors of, etc., of B. E., deceased, to J. F., Trustee and Exec- utor of and under Will of M. P., deceased. | } | Executor's deed. Dated —, 1—. |
| | | Recorded —, 1—, in Book No. —, p. —, in — county clerk's office, at — M. |

Conveys the same same premises as above described.

| | | |
|--|---|---|
| J. F., Trustee and Executor of and under Will of M. P., deceased, to M. N. | } | Deed covenant agst. grantor. Dated —, 1—. Recorded —, 1—, in Albany county clerk's office, in Book of Deeds No. —, at page 453, at — M. |
|--|---|---|

Conveys the same premises, in consideration of \$ —.

| | | |
|---|---|---|
| M. N. and F. N., his wife, to F. G. | } | Full covenant deed. Dated —, 1—. Recorded —, 1—, in — county clerk's office, at — M., in Book No. —, at page —. |
|---|---|---|

Conveys the same premises in consideration of \$ —.

Searches accompany this abstract (and are annexed hereto), assuming the correctness of which, the said F. G. is believed to have a perfect and unincumbered title in fee-simple absolute to the said premises, by virtue of the last-mentioned conveyance.

Dated —, 1 —.

(Signature of Attorney.)

(Annex searches and other exhibits.)

No. 3.

Abstract of title, another form, property passing through foreclosure proceedings and by inheritance.

Abstract of title, from —, 1—, to property on south side of — street in the city of —, being part of the lot No. —, on map of, etc. (describing map).¹

| | | |
|----------------------------|---|---|
| 1. J. G. F. to J. D. | } | Warranty deed. Dated —, 1—. Recorded —, 1—, at — M., in — county clerk's office, in Book No. — of Deeds, at page —. |
|----------------------------|---|---|

Conveys, in consideration of \$1,000, house and lot on south-
erly side of — street, in the — ward of the city of —,

1. See note 1, to form No. 2.

west of — street, described as follows, to-wit: Beginning, etc. (insert full description from deed). Internal revenue stamp, \$1.00 upon deed.

2. J. D. }
 to }
 C. M. F. } Mortgage dated —, 1—.
 Recorded —, 1—, at — M., in —
 county clerk's office, in Book No. —,
 at page —.

Describes the above-mentioned premises; given to secure the payment of \$500, a part of the purchase-money on above conveyance, payable in — years from date, with interest thereupon at the rate of — per cent, per annum, payable semi-annually.

3. C. M. F }
 to }
 L. M. P. } Assignment.
 Dated —, 1—.
 Recorded —, 1—, at — M., in
 Book No. — of Mortgages, page
 —, in — county clerk's office.

Assigns above-described mortgage in consideration of —.

4. A. F. }
 to }
 J. A. and D. }
 M. A. } Release.
 Dated —, 1—.
 Recorded —, 1—, at — M., in
 Book No. — of Mortgages, at page
 —, in said clerk's office.

Releases from the lien of the above-mentioned mortgage, the southerly portion of the premises therein described, 44 x 100 ft., which south part had been purchased from the heirs of J. D. by J. A. and D. M. A.

5. J. D., the above-mentioned mortgagor, died —, 1—, leaving him surviving his widow J. D., and eight children, viz:
J. D.,
M. A. D., who married P. S., —, 1—,
D. D.,
J. E. D.,
J. F. D.,
J. D.,
N. D., and P. H. D., his only heirs at law.

6. J. D. } Quit-claim deed.
to } Dated —, 1—.
J. D., widow of } Recorded —, 1—, in — county
J. D. } clerk's office, in Book of Deeds No.
—, at page —.

Conveys the interest of J. D., as heir at law of J. D., deceased, in said premises. Recites that the grantor is unmarried.

- 7 L. M. P. } Notice of pendency of action.
agst. } Dated —, 1—.
J. D., D. D., J. E. D., } Recorded —, 1—, at — M.,
J. F. D., N. D., P. } in Book No. —, at page —, of
H. D., and M. D. S. } Notices of pendency of action.

Action in Supreme Court, — county, to foreclose above mortgage. Describes the above-mentioned premises as described in said mortgage, excepting the southerly portion thereof, 44 x 100 ft., which was released as aforesaid.

8. Same plaintiff } Judgment-roll in above action.
agst. } Filed in — county clerk's office —,
Same defendants. } 1—, at — M.

Judgment of foreclosure rendered —, 1—, at — Special Term, directing sale of property last described by W. M., referee, at public auction, in the county of —.

9. W. M., referee, } Referee's deed.
to } Dated — 1—.
L. C. F. } Recorded — 1—, at — M., in
— county clerk's office in Book
of Deeds No. —, at page —.

Conveys the premises described in the above-mentioned mortgage (No. 2), under sale made pursuant to the judgment above referred to.

10. Order dated —, 1—, confirming referee's report of sale, filed —, 1—, in above-entitled action, entered in — county clerk's office.

(Add statement and certificate, as in last form, No. —.)

[Or, as above to No. 7, and from thence as follows]:

- | | | |
|---|---|---|
| 7. Statute foreclosure sale to L. C. F. | } | Affidavits, etc., recorded —, 1—, at — M., in — county clerk's office, in Book No. — of Mortgages, at page —. |
|---|---|---|

Conveys same premises described in above-mentioned mortgage (No. 2). Sale made pursuant to statute (N. Y. Code of Civil Procedure, §§ 2387-2409).¹

(Add statement and certificate, as in form No. —.)

No. 4.

Abstract of title, another form, property passing through partition proceedings and proceedings for sale of infant's property.

As in form No. 3, to No. 2, and from thence as follows:

3. J. D., the above-named grantee, died —, 1—, leaving, him surviving, his widow, J. D., and eight children, viz.: (stating their names, etc., as in form No. 3).

- | | | |
|---|---|---|
| 4. M. A. S. and P. S., her husband, agst. J. D., D. D., J. E. D., J. F. D., N. D. and P. H. D. | } | Action to partition above-mentioned property. <i>Lis pendens</i> filed —, 1—. Recorded —, 1—, in Book No. —, at page —. |
|---|---|---|

By the judgment-roll in above-entitled action, filed in — county clerk's office on the — day of —, 1—, at —

| | |
|--|--|
| 1. The purchaser of the mortgaged premises, upon a sale conducted as prescribed in title 9 of chapter 17 of the N. Y. Code of Civil Procedure, obtains title thereto, against all persons bound by the sale, without the execution of a conveyance, except when he is the person authorized to execute the power of sale. Such a purchaser also obtains title, in like manner upon payment of the pur- | chase-money, and compliance with the other terms of sale, if any, without the filing and recording of the affidavits, as prescribed in section 2398 of that Code. But he is not bound to pay the purchase-money, until the affidavits, specified in that section, with respect to the property purchased by him, are filed, or delivered or tendered to him for filing. (N. Y. Code Civ. Proc., § 2400.) |
|--|--|

M., lots — and — on the map accompanying the commissioners' report, described as lots — and — on the — side of — street, commencing, etc. (describing lots as in judgment) part of the property described in Deed No. 1, are set off in severalty to D. D.

| | | |
|--|---|---|
| 5. D. D., by M. P., Special Guardian, to L. C. F. | } | Guardian's deed. Dated —, 1—. Recorded —, 1—, at — M., in Book No. — of Deeds, page —, in — county clerk's office. |
|--|---|---|

Conveys the said lots Nos. — and —, last above referred to, in consideration of \$—. This sale and conveyance were made —, 1—, under an order of the — Court, by which the said guardian is directed to convey said premises to above-named grantee, under an agreement made by him, dated —, 1—.

6. SUPREME COURT.

In the Matter of the sale
 of the Real Property
 of D. D., an infant. }

Order confirming special guardian's final report in above proceeding, made at a Special Term held at, etc., on, etc., and entered in — county clerk's office.

(Add statement and certificate, as in form No. 2.)

No. 5.

Abstract of title, another form, title obtained through sheriff's sale under execution issued upon judgment.

Abstract of, etc. (as in form No. 3).

| | | |
|--|---|--|
| 1. W. K. and J. K., his wife, to J. M. L. | } | Warranty deed. Dated —, 1—. Recorded —, 1—, at — M., in Book of Deeds No. —, at page —, in — county clerk's office. |
|--|---|--|

Conveys premises situated, etc. (describing same as in deed.)

- | | | | |
|----|---|---|---|
| 2. | H. W. vs. J. M. L. | } | Judgment of Supreme Court, ——— county. Recorded ———, 1——. Docketed in ——— county ———, 1——. Recovery, \$——. Costs, \$——. Total, \$——. |
| 3. | A. G., Sheriff of ——— county, to H. W. | } | Sheriff's certificate of sale. Dated ———, 1——. Recorded ———, 1——, at ——— M., in same office in Book of Sheriff's Certificates of Sale, Vol. ———, page ———. |

Recites sale of all the right, title and interest of the said J. M. L., on the ——— day of ———, 1——, or at any time thereafter, in and to the above-described premises, under execution issued ———, 1——, upon above-mentioned judgment, against the property of said J. M. L. Consideration, \$——.

- | | | | |
|----|---|---|--|
| 4. | A. G., Sheriff of ——— county, to H. W. | } | Sheriff's deed. Dated ———, 1——. Recorded ———, 1——, at ——— M., in Book No. ——— of Deeds, at page ———. |
|----|---|---|--|

Conveys, pursuant to above-mentioned sale, all the right, title and interest of the judgment debtor, J. M. L., which he had in said property, on the ——— day of ———, or at any time thereafter, in consideration of \$——, amount bid thereupon.

(Add statement and certificate, as in form No. 2.)

CHAPTER III.

Forms of Acknowledgment and Proof of Deeds.

- No. 6. Certificate of acknowledgment of execution of conveyance of land situated in the State of Alabama.
7. Certificate of acknowledgment of execution by married woman of conveyance of homestead in the State of Alabama.
8. Certificate of proof of conveyance of land situated in Alabama, by subscribing witness.
9. Certificate of acknowledgment of conveyance of land situated in Arizona.
10. Certificate of acknowledgment of conveyance by married woman of homestead in Arizona.
11. Certificate of proof by subscribing witness of execution of instrument under the laws of Arizona.
12. Certificate of acknowledgment of deed by husband and wife conveying lands of husband, situated in Arkansas.
13. Certificate of acknowledgment of deed executed by husband and wife of property of wife in Arkansas.
14. Certificate of proof of deed of property situated in Arkansas, by subscribing witness.
15. Certificate of proof of handwriting of grantor and subscribing witness to deed of property situated in Arkansas.
16. Certificate of acknowledgment of deed of real property situated in California.
17. Certificate of acknowledgment by corporation of conveyance of land situated in California.
18. Certificate of acknowledgment of deed of homestead situated in Colorado.
19. Certificate of acknowledgment of execution by individual of conveyance of property situated in Connecticut.
20. Certificate of acknowledgment by corporation of conveyance of property situated in Connecticut.
21. Certificate of acknowledgment by individual of lands situated in Dakota.
22. Certificate of acknowledgment of conveyance of lands situated in Dakota, by attorney in fact.
23. Certificate of acknowledgment by corporation of conveyance of property situated in Dakota.

- No. 24.** Certificate of proof of conveyance of land situated in Dakota by subscribing witness.
25. Certificate of proof by party to conveyance of land situated in Dakota.
26. Certificate of acknowledgment by individual, or by husband and wife, of conveyance of land situated in Delaware.
27. Same certificate, acknowledgment by corporation.
28. Certificate of acknowledgment of conveyance of land situated in District of Columbia, by husband and wife.
29. Certificate of acknowledgment of conveyance of land situated in Florida.
30. Certificate of acknowledgment by married woman of conveyance of land situated in Florida.
31. Certificate of acknowledgment of conveyance of real estate situated in the State of Georgia.
32. Certificate of proof by subscribing witness of execution of deed of real estate situated in State of Georgia.
33. Certificate of acknowledgment of conveyance of real property situated in the State of Idaho.
34. Certificate of acknowledgment, by married woman, of conveyance of real property situated in the State of Idaho.
35. Certificate of acknowledgment of conveyance by corporation of real property situated in the State of Idaho.
36. Certificate of acknowledgment of conveyance of real property situated in Illinois.
37. Certificate of acknowledgment of chattel mortgage in State of Illinois.
38. Certificate of acknowledgment of conveyance of real property situated in Indiana.
39. Certificate of proof of conveyance of real property situated in Indiana.
40. Certificate of acknowledgment of conveyance of real property situated in Indian Territory.
41. Certificate of acknowledgment by grantor of conveyance of real estate situated in Iowa.
42. Certificate of acknowledgment, by attorney in fact, of conveyance of real property situated in Iowa.
43. Certificate of acknowledgment of conveyance of real property situated in Kansas.
44. Certificate of acknowledgment, by husband and wife, of conveyance of real estate situated in Kentucky, taken out of the State.
45. Certificate of acknowledgment by husband and wife, within the State of Kentucky, of conveyance of real property situated in that State.
46. Certificate of acknowledgment of conveyance of real estate situated in Louisiana.
47. Certificate of acknowledgment of conveyance of real property situated in Maine.

- No. 48. Certificate of acknowledgment taken within the State of Maryland.
49. Certificate of acknowledgment by husband and wife in State of Maryland.
50. Certificate of acknowledgment taken out of State of Maryland.
51. Certificate of acknowledgment of deed conveying real estate situated in Massachusetts.
52. Certificate of acknowledgment by officer of corporation of deed of real property situated in Massachusetts.
53. Certificate of acknowledgment of deed conveying real property situated in Massachusetts, by attorney of grantor.
54. Certificate of acknowledgment of conveyance of real property situated in State of Michigan.
55. Certificate of acknowledgment by natural person acting in his own right of conveyance of real estate situated in Minnesota.
56. Same certificate of acknowledgment by natural person acting by attorney.
57. Same certificate of acknowledgment by corporation or joint-stock association.
58. Certificate of acknowledgment of conveyance of real property situated in Mississippi.
59. Certificate of proof of execution of conveyance of real estate situated in Mississippi by subscribing witness.
60. Certificate of acknowledgment of conveyance of real property situated in Missouri by natural persons acting in their own right.
61. Certificate of acknowledgment of conveyance of real estate situated in Missouri by natural persons acting by attorney.
62. Certificate of acknowledgment of conveyance of real estate situated in Missouri by corporation or joint-stock association.
63. Certificate of acknowledgment of conveyance of real estate situated in Montana by grantor known to officer.
64. Certificate of acknowledgment of conveyance of real property in Montana by grantor unknown to officer.
65. Certificate of proof by subscribing witness of conveyance of real property situated in Montana.
66. Certificate of acknowledgment by husband and wife of conveyance of real estate situated in Nebraska.
67. Certificate of acknowledgment of conveyance of real property situated in Nevada by grantor known to officer.
68. Certificate of acknowledgment of conveyance of real estate situated in Nevada by grantor unknown to officer.
69. Certificate of acknowledgment by husband and wife of conveyance of real property situated in Nevada.
70. Certificate of acknowledgment of conveyance of real property situated in New Hampshire.
71. Certificate of acknowledgment of conveyance of real estate situated in New Jersey by person not known to officer.
72. Certificate of acknowledgment of conveyance of real estate situated in New Jersey by husband and wife known to officer.

- No. 73. Certificate of proof of execution of conveyance of real estate situated in New Jersey by subscribing witness known to officer.
74. Certificate of proof of execution of deed of real property situated in New Jersey by corporation.
75. Certificate of acknowledgment of conveyance of real estate in New Mexico by natural persons acting in their own right.
76. Certificate of acknowledgment of conveyance of real property situated in New Mexico by natural persons acting by attorney.
77. Certificate of acknowledgment of conveyance of real property situated in New Mexico in case of corporation or joint-stock association.
78. Certificate of acknowledgment of conveyance of real property situated in North Carolina by grantors.
79. Certificate of proof of conveyance of real estate situated in North Carolina by subscribing witness.
80. Same as form No. 21.
81. Same as form No. 22.
82. Same as form No. 23.
83. Same as form No. 24.
84. Same as form No. 25.
85. Petition for appointment of commissioners by New York Supreme Court to take acknowledgment in foreign country.
86. Order upon petition, form No. 84, directing commission to issue.
87. Commission, issued under form No. 84, to take and certify acknowledgment in foreign country.
88. Certificate of acknowledgment of instrument by commissioner appointed by order of court, No. 85.
89. Certificate of acknowledgment or proof in New York State by grantor known to officer.
90. Certificate of acknowledgment in New York State by grantor, identified by witness known to the officer.
91. Certificate of acknowledgment in New York State by husband and wife known or identified to officer.
92. Certificate of acknowledgment in New York State by under-sheriff of deed executed by him in the name of the sheriff.
93. Certificate of acknowledgment in New York State by person conveying under power of attorney.
94. Certificate of proof in New York State by officer of corporation known to the officer taking the proof.
95. Certificate of proof in New York State by subscribing witness identified to officer.
96. Petition for subpoena in New York State requiring witness to appear and testify touching the execution of conveyance.
97. Subpoena requiring witness to conveyance to appear and testify touching its execution.
98. Affidavit of service of subpoena, form No. 96.
99. Warrant to arrest witness neglecting to attend pursuant to subpoena form No. 96.

- No. 100. Commitment of witness refusing to appear and testify, pursuant to subpoena, form No. 97.
101. Certificate of acknowledgment in New York State by a sheriff or other officer.
102. Certificate of acknowledgment by an administrator, executor, trustee or referee in New York State.
103. County clerk's certificate to be annexed to certificate of acknowledgment to be used in another State or recorded or read in evidence in another county of New York State than that in which the acknowledgment is taken.
104. Oath or affirmation to be administered to subscribing witness in New York State proving conveyance.
105. Oath or affirmation to be administered in New York state to person identifying the parties or a witness to a conveyance.
106. Form of oath or affirmation to be administered to an affiant or affiants.
107. Certificate of proof in New York State of the execution of a conveyance, the subscribing witnesses to which are dead.
108. Certificate of acknowledgment of conveyance of real estate situated in Ohio, by husband and wife.
109. Certificate of acknowledgment by corporation of conveyance of real estate situated in Ohio.
110. Certificate of acknowledgment by grantor of conveyance of real estate situated in Oklahoma.
111. Certificate of acknowledgment by corporation of conveyance of real estate situated in Oklahoma.
112. Certificate of acknowledgment of conveyance of real estate situated in Oklahoma, by attorney in fact.
113. Certificate of acknowledgment of conveyance of real estate situated in Oregon, by one or more grantors.
114. Certificate of acknowledgment of conveyance of lands situated in Oregon, by attorney in fact of grantor.
115. Certificate of acknowledgment by husband and wife of conveyance of real estate situated in Pennsylvania.
116. Proof by officer of corporation of execution of conveyance of real estate situated in Pennsylvania, by corporation.
117. Certificate of acknowledgment by grantor of conveyance of real estate situated in Rhode Island.
118. Certificate of acknowledgment of conveyance of real estate situated in Rhode Island, by attorney in fact.
119. Certificate of acknowledgment of conveyance of real estate situated in Rhode Island, by officer of corporation.
120. Certificate of proof by subscribing witness of execution of conveyance of real estate situated in South Carolina.
121. Certificate of relinquishment of dower by married woman in real estate conveyed by husband, situated in South Carolina.
122. Certificate of acknowledgment by individual of conveyance of property situated in South Dakota.

- No. 123.** Same certificate of acknowledgment by attorney in fact of grantor.
- 124.** Same certificate of acknowledgment by officer of corporation.
- 125.** Certificate of proof by subscribing witness to conveyance of land situated in South Dakota.
- 126.** Certificate of proof by party to conveyance of land situated in South Dakota.
- 127.** Certificate of acknowledgment of conveyance of real estate situated in Tennessee, before clerk of County Court or his deputy.
- 128.** Certificate of acknowledgment of conveyance of real estate situated in Tennessee, before commissioner for Tennessee.
- 129.** Certificate of acknowledgment by husband and wife of conveyance of real property situated in Tennessee.
- 130.** Certificate of proof of execution of conveyance of real estate situated in Tennessee, by subscribing witnesses.
- 131.** Certificate of acknowledgment of conveyance of real estate situated in Texas, ordinary form.
- 132.** Certificate of acknowledgment by married woman of conveyance of real estate situated in Texas.
- 133.** Certificate of proof by subscribing witness of conveyance of real property situated in Texas.
- 134.** Certificate of acknowledgment of conveyance of real estate situated in Utah Territory, by person known to the officer.
- 135.** Certificate of acknowledgment of conveyance of real estate situated in Utah, by grantor unknown to the officer.
- 136.** Certificate of proof by subscribing witness of execution of conveyance of real estate situated in Utah.
- 137.** Certificate of acknowledgment of conveyance of real estate situated in Utah, by officer of corporation.
- 138.** Certificate of acknowledgment of execution of conveyance, by attorney in fact of grantor of property in Utah.
- 139.** Certificate of acknowledgment by grantor of conveyance of real estate situated in Vermont.
- 140.** Certificate of acknowledgment of conveyance of real estate situated in Virginia.
- 141.** Certificate of acknowledgment of conveyance of real estate situated in State of Washington.
- 142.** Certificate of acknowledgment of conveyance of real estate situated in West Virginia.
- 143.** Certificate of acknowledgment by husband and wife, or by wife, of conveyance of real estate situated in West Virginia.
- 144.** Certificate of acknowledgment by corporation or joint-stock association of conveyance of real estate situated in West Virginia.
- 145.** Certificate of acknowledgment by grantor of conveyance of real estate situated in Wisconsin.
- 146.** Certificate of acknowledgment of conveyance of real estate situated in State of Wyoming.

No. 6.

Certificate of acknowledgment of execution of conveyance of land situated in the State of Alabama.

(Code of Alabama, § 1802.)

THE STATE OF (ALABAMA), }
County of ———. }

I, J. F., a notary public in and for said county (or, state other official title), do hereby certify that (*) A. B. (and C. D.), whose name (or, names) is (or, are) signed to the foregoing conveyance, and who is (or, are) known to me, acknowledged before me on this day, that, being informed of the contents of the foregoing conveyance, he (or, they) (severally) executed the same voluntarily on the day the same bears date.

Given under my hand, this — day of —, 1——.¹

J. F.,

Notary Public (or state other official title).

1. Acknowledgments and proofs of conveyances may be taken by the following officers within the State of Alabama: Judges of the Supreme and Circuit Courts, and the clerks of such courts; chancellors, registers in chancery, judges of the courts of probate and their clerks, justices of the peace and notaries public. (Civil Code of Alabama, §§ 1799, 795, 840, subd. 4, 1112.) As to powers of clerks of probate judges, see *Halso v. Seawright* (65 Ala. 431).

If taken without that State and within the United States, such acknowledgments and proofs may be taken by judges and clerks of any Federal court, judges of any court of record in any State, notaries public, or commissioners appointed by the governor of the State. (Id., § 1800.)

Beyond the limits of the United States such acknowledgments and

proofs may be taken by the judge of any court of record, mayor or chief magistrate of any city, town, borough or county, notaries public, or by any diplomatic, consular or commercial agent of the United States. (Id., § 1800.) See *Keller v. Moore* (51 Ala. 340).

No separate examination need be made of a married woman, except in case of the alienation of a homestead. (See next form, No. 7, and note 1 thereto.) The husband must join with her in conveying her separate property (Code of Alabama, § 2348), and such conveyance must be attested by two witnesses, or by the acknowledgment of the husband and wife. (Id., § 1805.)

The acknowledgment of a conveyance operates as a compliance with section 1789 of the Code of Alabama, which requires a conveyance to be at-

tested by two witnesses. (*Id.*, § 1790.) See *Weil v. Pope* (53 Ala. 585); *Sykes v. Shows* (74 id. 382).

The form above given is the form of the acknowledgment to be used in that State, on conveyances of every description admitted to record. (§ 1802, *id.*) See, also, *Carter v. Doe* (21 Ala. 72); *Sharpe v. Orme* (61 id. 263); *Coker v. Ferguson* (70 id. 284); *Merritt v. Phoenix* (48 id. 87); *Keller v. Moore* (51 id. 340); *Boykin v. Smith* (65 id. 294); *Rogers v. Adams* (66 id. 600); *Roney v. Moss* (76 id. 491); *Barnett v. Proskauer* (62 id. 486); *Smith v. McGuire* (67 id. 34); *Moog v. Strang* (69 id. 98); *Van Cleave v. Wilson* (73 id. 387), as to what constitutes a proper acknowledgment; and see *Hart v. Ross* (57 Ala. 518), cited in note to form No. 8, as to acknowledgment in other State.

Conveyances of property, whether absolute or on condition, which are acknowledged or proved according to law, and recorded within twelve months from their date, may be received in evidence in any court, with-

out further proof; and if it appears to the court that the original conveyance has been lost or destroyed, or that the party offering the transcript has not the custody or control thereof, the court must receive a transcript, duly certified, in the place of such original. (Code of Alabama, § 1798.)

To be good as against *bona fide* (judgment) creditors, they must be proved or acknowledged, and recorded within thirty days, in the office of the judge of probate. (Code of Alabama, § 1810.)

As to necessity of stating in the certificate of acknowledgment that the deed was executed on the day of its date, see *Parsons v. Boyd* (20 Ala. N. S. 112); *Carter v. Doe, ex dem. Caudron* (21 id. 72); *Lea v. Polk Co. Copper Co.* (21 How. U. S. 493).

Powers of attorney and other instruments conferring authority to convey property may be acknowledged or proved in the same manner as conveyances, and must be received in evidence to the same extent. (*Id.*, § 1801.)

No. 7.

Certificate of acknowledgment by married woman of conveyance of homestead in the State of Alabama.

(Code of Alabama, § 2508.)

STATE OF (ALABAMA), }
— county. }

I, A. B., judge of — (or other officer, as the case may be), do hereby certify that on the — day of —, 1—, came before me the within-named C. D., known to me (or, made known to me) to be the wife of the within-named E. D., who, being examined separate and apart from her husband touching her signature to the within (conveyance), acknowledged that she signed the same of her own free will

and accord, and without fear, constraints or threats on the part of her husband.

In witness whereof, I hereto set my hand, this — day of —, 1——.¹

A. B.,

Judge (or other officer, as the case may be)

1. No mortgage, deed or other conveyance of the homestead by a married man shall be valid without the voluntary signature and assent of the wife, which must be shown by her examination, separate and apart from him, before an officer authorized by law to take acknowledgments of deeds, and the certificate of such officer upon or attached to such mortgage, deed or other conveyance, which certificate must be substantially in the above form. (Code of Ala-

bama, § 2508.) See, also, *Halso v. Seawright* (65 Ala. 431); *Hood v. Powell* (73 id. 171).

Deficiencies in the certificate cannot be supplied by parol (*Scott v. Simons*, 70 Ala. 352), but a defective acknowledgment may be cured after delivery of the instrument. *Caball v. Citizens' Ass'n* (61 Ala. 232); *Van Cleave v. Wilson* (73 id. 387); *Hood v. Powell* (*supra*). See, also, note 1 to last form, No. 6.

No. 8.

Certificate of proof of conveyance of land, situated in the State of Alabama, by subscribing witness.

(Code of Alabama, § 1803.)

As in form No. 6, to (*), and from thence as follows: That A. B., a subscribing witness to the foregoing (conveyance), known to me, appeared before me this day, and, being sworn, stated that C. D., the grantor, voluntarily executed the same in his presence, and in the presence of E. F., the other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor, and of E. F., the other witness; and that such other witness subscribed his name as a witness in his presence.

Given under my hand, this — day of —, A. D., 1——.¹

A. B.,

Judge (or other officer, as the case may be).

1. The above is the form of probate of a conveyance admitted to record in the State of Alabama. (Code of Alabama, § 1803.) See, also, *Hines v. Chancey* (47 Ala. 637); *Hart v. Ross* (57 id. 518); *Harrison v. Simons*

(55 id. 510); and see note 1 to form No. 6.

A probate of a conveyance executed in the State of Texas, of real property situated in Alabama, and certified to by a notary public, under

his official seal,—*Held*, to entitle the to act as such, no such certificate being required by the laws of Alabama. (Hart v. Ross, *supra*.)
 conveyance to be recorded in Ala- being required by the laws of Alabama.
 bama, without a certificate of any (Hart v. Ross, *supra*.)
 officer to the authority of the notary

No. 9.

Certificate of acknowledgment of conveyance of real property situated in the Territory of Arizona, ordinary form.

(Rev. Stat. Arizona, ¶ 2576.)

(TERRITORY) OF (ARIZONA), } ss.:
County of —,

Before me, A. B., a (here insert the name and character of the officer) on this day personally appeared (*) C. D., known to me (or, proved to me on the oath of E. F.) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that (he) executed the same, for the purpose and consideration therein expressed.

Given under my hand and seal of office, this — day of —, A. D., 1——.¹

[SEAL.]

A. B.
 (Official title.)

1. The acknowledgment or proof of an instrument of writing for record may be made within the Territory of Arizona, before any of the following officers: 1. A clerk of a court having a seal; 2. A notary public; 3. A county recorder; 4. A justice of the peace. (Revised Statutes of Ariz., 2576.)

If made without the Territory, but within the United States or their territories, before either: 1. A clerk of

some court of record having a seal; 2. A commissioner of deeds appointed under the laws of the Territory of Arizona; 3. A notary public. (Id. 2577).

If made without the United States, before either: 1. A minister, commissioner or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made; 2. A notary public. (Id. 2578.)

No. 10.

Certificate of acknowledgment by married woman of instrument purporting to convey homestead, in Territory of Arizona.

(Rev. Stat. Arizona, ¶ 2583.)

(THE TERRITORY) OF (ARIZONA), }
County of —.

As in last form to (*) and from thence as follows: E. D., wife of C. D., known to me (or, proved to me on oath of G.

H.) to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said E. D., acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office, this — day of —, A. D., 1——.¹

[SEAL.]

(Signature of officer.)
(Official title.)

1. See Revised Statutes of Arizona, paragraph 2583, as to this form, which is to be used only on acknowledgment by a married woman to any instrument purporting to convey the homestead. In other cases form No. 9 must be used. See, also, note 1 to that form.

No. II.

Certificate of proof of execution of an instrument under the law of Arizona Territory by subscribing witness.

(Rev. Stat. of Arizona, ¶ 2586.)

As in form No. 9 to (*), and from thence as follows: J. D., known to me (or, proved to me on the oath of E. F.) to be the person whose name is subscribed as a witness to the foregoing instrument in writing, and after being duly sworn by me, stated, on oath, that he saw C. D., the grantor (or, person who executed the foregoing instrument), subscribe the same (or, that C. D., the grantor, or person who executed such instrument of writing, acknowledged in his presence that he had executed the same for the purposes and consideration herein expressed), and that he had signed the same as a witness at the request of the grantor (or, person who executed the same).

Given under my hand and seal of office, this — day of —, A. D., 1——.¹

[SEAL.]

(Signature of officer.)
(Official title.)

1. See paragraph 2586 of Revised Statutes of Arizona Territory as to this form of proof. See, also, note to form No. 9.

No. 12.

Certificate of acknowledgment of deed by husband and wife conveying land of husband situated in State of Arkansas.

(Statutes of Arkansas, § 651, as amended 1887.)

STATE OF (ARKANSAS), } ss.
County of —,

On this — day of —, 1—, before me, A. B., a (here insert title of officer, as in form No. 6), within and for the county and State aforesaid, duly commissioned and acting, personally appeared C. D., to me well known as the grantor in the foregoing deed, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth.

[And on the same day also voluntarily appeared before me M. D., wife of the said C. D., to me well known as the person whose name appears signed to the within and foregoing deed, and, in the absence of her said husband, declared that she had of her own free will signed and sealed the relinquishment of dower in said deed, for the purposes therein contained and set forth, without compulsion of her said husband.]

Witness my hand and seal as such (insert title of officer), on this — day of —, 1—, at — county.¹

[L. S.]

A. B

(Title of officer.)

1. The proof or acknowledgment of every deed or instrument of writing for the conveyance of any real estate shall be taken by some one of the following courts or officers:

First. When acknowledged or proved within the State, before the Supreme Court, the Circuit Court or either of the judges thereof, or the clerk of any court of record, or before any justice of the peace or notary public.

Second. When acknowledged or proved without the State and within

the United States or other territories, before any court of the United States, or of any State or Territory, having a seal, or the clerk of any such court, or before any notary public, or before the mayor of any city or town, or the chief officer of any city or town having a seal, or before a commissioner appointed by the governor of the State, or before the clerk of any court of record of the Indian Territory embracing the five civilized tribes. Provided, that no acknowledgment made in the Indian country shall be good

unless the seal of the officer taking such acknowledgment shall be thereto attached. Such deed or conveyance must be attested, when taken by an officer having a seal of office, under such seal, but if such officer have no seal of office, then under his official signature.

Third. When acknowledged or proven without the United States, before any court of any State, kingdom or empire having a seal, or any mayor or chief officer of any city or town having an official seal, or before any officer of any foreign country, who, by the laws of such country, is authorized to take probate of the conveyance of real estate of his own country, if such officer has by law an official seal. Such acknowledgment

or proof must be attested under the official seal of the court or officer before whom such probate is had. (Mansfield's Digest Stats. Ark. (1884), §§ 651, 652, 653, as amended 1887, p. 142.)

By § 4, of chapter CVI, of Laws of Arkansas, of 1885, the chancellor is given power to take and certify acknowledgments of deeds and other instruments of writing required by law to be acknowledged.

A seal by scroll or otherwise is necessary in that State to a conveyance of real property. (Floyd v. Ricks, 14 Ark. 286.)

The forms of certificates of acknowledgment, etc., must be strictly complied with to render the acknowledgment valid.

No. 13.

Certificate of acknowledgment of deed executed by husband and wife, of property of wife in State of Arkansas

(Statutes of Arkansas, § 659.)

STATE OF (ARKANSAS), }
County of —, } ss.:

On this — day of —, 1—, before me, A. B., a (here insert title of officer), within and for the county and State aforesaid, duly commissioned and acting, personally appeared C. D., to me well known as the person whose name appears upon the within and foregoing deed of conveyance as (one of the parties) grantor, and stated that he had executed the same for the consideration and purposes therein mentioned and set forth, and I so certify.

[And I further certify that, on this day, voluntarily appeared before me, B. D., wife of said C. D., to me well known to be the person whose name appears upon the within and foregoing deed, and, in the absence of her said husband, declared that she had of her own free will executed the same (or, signed and sealed the relinquishment of dower

in said deed) for the purposes therein contained and set forth without compulsion or undue influence of her said husband.]

Witness my hand and seal as such (insert title of officer), on this — day of —, at said — county.¹

[L. S.]

A. B.

(Title of officer.)

1. See note to last form, No. 12.

as a *feme sole*, and the husband need

If property has been conveyed to a married woman since 1874, it may be conveyed and acknowledged by her

not sign the deed. (Ark. Const., art. 9, § 7; *Roberts v. Wilcoxson*, 36 Ark. 355, 366.)

No. 14.

Certificate of proof of deed of property situated in State of Arkansas, by subscribing witness.

(Statutes of Arkansas, § 657.)

STATE OF (ARKANSAS), } ss.:
County of —,

On this day came before me, A. B., a (here insert title of officer) in and for said county and State, C. D., one of the subscribing witnesses to the foregoing deed, to me personally well known, who, being by me first duly sworn, stated that he saw E. G., the grantor in said deed, subscribe the same the day it is dated (or, that E. F., the grantor in said deed, acknowledged in his presence on the — day of —, 1—, that he had executed said deed for the consideration and purposes therein expressed), and that he and G. H., the other subscribing witness, subscribed said deed as attesting witnesses at the request of said grantor.

Witness my hand and seal of office on this — day of —, 1—.¹

A. B.

[L. S.]

Title of officer.)

1. See note to form No. 12.

The proof of a deed is made by one or more of the subscribing witnesses personally appearing before the proper court or officer, and stating on oath that he or she saw the grantor subscribe such deed or in-

strument in writing, or that the grantor acknowledged in his or their presence that he had subscribed such deed or instrument for the purposes and considerations therein mentioned, and that he or they had subscribed the same as witnesses at

the request of the grantor. (Mansfield's Dig. Statutes of Arkansas (1884), § 657.) of the subscribing witnesses, which evidence is required to consist of the depositions of two or more disinterested persons, swearing to each signature. (See next form of certificate.) (Id., § 658.)

If the witnesses are dead or cannot be had, the deed, etc., may be proved by evidence of the handwriting of the grantor, and at least one

No. 15.

Proof of handwriting of grantor and subscribing witness to deed of property situated in State of Arkansas.

STATE OF (ARKANSAS), } ss.:
County of —, }

On this day came before me, A. B., a (here insert title of officer, as in form No. 6), in and for said county and State, C. D. and E. F., and upon their oaths stated that the signatures of G. H., the grantor in the foregoing deed, and of I. J., a witness thereto, are genuine, and in the handwriting of the said G. H. and I. J., respectively.

Witness my hand and seal of office on this — day of —, 1——.¹

[L. S.]

A. B.

(Title of officer.)

1. See note 1, to form No. 14

No. 16.

Certificate of acknowledgment of conveyance of real property situated in State of California.

(Civil Code of California, § 1189, as amended by Chap. CXXV of Statutes, etc., of 1891, p. 137.)

STATE OF (CALIFORNIA), } ss.:
County of —, }

On this — day of —, in the year —, before me, A. B., a (here insert the quality of the officer) personally appeared C. D. (and G. H.), known to me (or, proved to me on the oath of E. F.) to be the person (or, persons) whose name

is (or, whose names are) subscribed to the (within) instrument, and acknowledged to me that he (or, she or they) executed the same.¹

[SEAL when required.]

A. B.
(Official title.)

1. The proof or acknowledgment of an instrument may be made at any place within the State, before a justice or clerk of the Supreme Court, or judge of a Superior Court. (Civ. Code Cal., § 1180.)

Or within the city, city and county, county or district, for which the officer was elected or appointed, before either: 1. A clerk of a court of record; or, a county recorder; or, a notary public; or, a justice of the peace. (Id., § 1181.)

If made without the State, but within the United States, and within the jurisdiction of the officer, before either: 1. A justice, judge, or clerk of any court of record of the United States; or, 2. A justice, judge, or clerk of any court of record of any State; or, 3. A commissioner appointed by the governor of the State for that purpose; or, 4. A notary public; or, 5. Any other officer of the State where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment. (Id., § 1182.) The word "State" includes "Territory," also "District of Columbia." (Id., § 17. subd. 10.)

If made without the United States, before either: 1. A minister, commissioner or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made; or, 2. A consul, vice-consul or consular agent of the United States, resident in the country where the proof or acknowledgment is made; or, 3. A judge of a court of record of the

country where the proof or acknowledgment is made; or, 4. Commissioners appointed for such purposes by the governor of the State, pursuant to special statutes; or, 5. A notary public. (Id., § 1183.)

When any of the officers mentioned in the four preceding sections are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of his principal. (Id., § 1184.)

A conveyance by a married woman has the same effect as if she were unmarried, and may be acknowledged in the same manner. (Civ. Code of California, § 1187, as amended by Chap. CXXV, Statutes of 1891.)

Officers taking and certifying acknowledgments, or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also, their seals of office, if, by the laws of the State or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals. (Id., § 1193.)

If acknowledged before a justice of the peace, to be used in any other country than the one in which the justice resides, it must be accompanied by a certificate of the clerk of the county showing that, at that time, the justice was authorized to take the same, and that the clerk is acquainted with his handwriting, and believes that the signature is genuine. (Id., § 1194.)

An officer taking proof of the execution of any instrument must, in his certificate indorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him, or proved before him on the proceeding, together with the names of the witnesses examined before him, their places of residence, respectively, and the substance of their testimony. (Id., § 1200.)

No. 17.

Certificate of acknowledgment by corporation of execution of conveyance of real estate situated in the State of California.

(Civil Code of California, § 1189.)

STATE OF (CALIFORNIA), }
County of —, } ss.:

On this — day of —, in the year —, before me, A. B. (here insert the quality of officer), personally appeared C. D., known to me (or, proved to me on the oath of E. F.), to be the president (or, secretary) of the (name of corporation), the corporation that executed the (within) instrument, and acknowledged to me that such corporation executed the same.¹

[L. S.]

A. B.
(Official title.)

1. See note 1, to form No. 16.

No. 18.

Certificate of acknowledgment of conveyance of a homestead situated in the State of Colorado.

(Laws of Colorado of 1887, p. 228, § 6.)

STATE OF (COLORADO), }
County of —, } ss.:

I, A. B., a (naming the office) within and for the county and State aforesaid, do hereby certify that C. D., who is personally known to me (or, if not so known and his identity is proven to such officer by witness, then certify who was proven to me by the oath of E. F. (naming the witness a credible witness,) to be the same person whose name is subscribed to the foregoing instrument of writing, appeared before me this day in person, and acknowledged that he exe-

cuted the same as his free and voluntary act for the uses and purposes therein set forth.

Witness my hand and notarial seal (or if by clerk, say "and seal of the said court," said court being a court of record), this — day of —, A. D., 1——.¹

[L. S.]

A. B.

(Official title.)

1. Deeds, bonds and agreements in writing, conveying lands or any interest therein, or affecting title thereto, may be acknowledged or proved before any clerk of the Circuit or District Court of the United States, for the District of Colorado, or any deputy of such clerk; such clerk certifying such acknowledgment under the seal of such court respectively. (Laws of Colorado of 1879, p. 5, § 1.)

Deeds, bonds and agreements in writing, conveying lands, or any interest therein, or affecting title thereto, may be acknowledged or proved before the following officers:

First. When executed within the State, before any judge of any court of record, before the clerk of any such court of record, or the deputy of any such clerk, such judge, clerk or deputy clerk certifying such acknowledgment under the seal of such court; before the clerk and recorder of any county or his deputy, such clerk or deputy clerk certifying the same under the seal of said county; before any notary public, he certifying the same under his notarial seal; or before any justice of the peace within his county; provided, that if such deed, bond or agreement be for the conveyance of lands situate beyond the county of such justice of the peace, there shall be affixed to his certificate of such acknowledgment a certificate of the county clerk and recorder of the proper county, under his hand and

the seal of such county, to the official capacity of such justice of the peace, and that the signature to such certificate of acknowledgment is the true signature of such justice.

Second. When executed out of the State, and within the United States, or any Territory thereof, before the secretary of any such State or Territory, he certifying such acknowledgment under the seal of such State or Territory; before the clerk of any court of record of such State or Territory, or of the United States within such State or Territory having a seal, such clerk certifying the acknowledgment under the seal of such court; before any notary public of such State or Territory, he certifying the same under his notarial seal; before any commissioner of deeds for any such foreign State or Territory, appointed under the laws of the State of Colorado, he certifying such acknowledgment under his hand and official seal; before any other officer authorized by the laws of any such State or Territory to take and certify such acknowledgment: provided, there shall be affixed to the certificate of such officer, other than those above enumerated, a certificate by the clerk of some court of record of the county, city or district wherein such officer resides, under the seal of such court, that the person certifying such acknowledgment is the officer he assumes to be; that he has the authority, by the laws of such State or Territory, to

take and certify such acknowledgment, and that the signature of such officer to the certificate of acknowledgment is the true signature of such officer.

Third. When executed out of the United States, before any court of record of any foreign republic, kingdom, empire, state, principality or province having a seal, the acknowledgment being certified by the judge or justice of such court to have been made before such court, and such certificate to be attested by the seal of such court; before the mayor or other chief officer of any city or town having a seal, such mayor or other chief officer certifying such acknowledgment under such seal; before any consul of the United States within such foreign country, he certifying the same under the seal of his consulate. (Laws of Colorado of 1889, p. 86, etc., § 1.)

No officer authorized to take acknowledgments of instruments affecting the title to real property, shall hear or certify such acknowledgment unless the person making the same shall be personally known to such officer to be the identical per-

son he represents himself to be, or shall be proved to be such by at least one credible person known to such officer; but it shall not be necessary to state such fact in his certificate of acknowledgment attached to any instrument affecting the title to real property, except when it is intended to convey or mortgage a homestead, and in such case the acknowledgment shall contain the additional words now required by law:

STATE OF COLORADO, }
County of —, } ss.:

— appeared before me, this — day of —, 1—, in person, and acknowledged the foregoing instrument to be his act and deed for the uses specified therein.

Witness my hand and official seal.

[SEAL.]

A. B.

(Title of officer.)

Any deed or instrument relating to or affecting the title to real property, acknowledged substantially in accordance with the above form before a proper officer, shall be *prima facie* evidence of the proper execution thereof. (Laws of Colorado of 1887, p. 228, § 6.)

No. 19.

Certificate of acknowledgment, by individual, of execution of conveyance of property situated in the State of Connecticut.

(Gen. Stats. of Connecticut, p. 644, § 2954.)

STATE OF (CONNECTICUT), }
County of —, } ss.:

(Give place and date.)

Personally appeared, A. B., signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed. Before me.¹

C. D.

(Official title.)

1. All conveyances of lands shall be in writing, sealed by the grantor, and

subscribed with his own hand, or with his mark, with his name thereto an-

nexed, or by his attorney, authorized for that purpose by a power executed and acknowledged in the manner provided for conveyances, and attested by two witnesses with their own hands, and acknowledged by the grantor, or by such attorney, to be his free act and deed, if in the State, before a judge of a court of record of the State or of the United States, a clerk of the Superior Court, Court of Common Pleas, or District Court, justice of the peace, commissioner of the school fund, commissioner of the Superior Court, notary public, either with or without his official seal, town clerk, or assistant town clerk; and if in any other State or Territory of the United States, before a commissioner appointed by the governor of the State of Connecticut and residing therein, or any officer authorized to take the acknowledgment of deeds, in such State or Territory; and if in a foreign country, before any consul of the

United States, or notary public, or justice of the peace, in such foreign country; but no officer shall have power to take such acknowledgment, except within the territorial limits in which he may perform the proper duties of his office. (Gen. Stats. of Connecticut, p. 644, § 2954.)

Conveyances of real estate made to or by any corporation may be attested by witnesses interested therein, and may be acknowledged before properly authorized persons who are so interested. (Id., p. 644, § 2955.)

Conveyances of real estate situated in the State and powers of attorney therefor, executed and acknowledged in any other State or Territory in conformity with its laws, relative to the conveyance of lands therein situated, shall be valid. (Id., p. 645, § 2956.)

No separate acknowledgment by a married woman is required. (Id. § 2960.)

No. 20.

Certificate of acknowledgment, by corporation, of conveyance of property situated in the State of Connecticut.

(Gen. Stats. of Connecticut, p. 644, § 2955.)

STATE OF (CONNECTICUT), } ss.:
County of ——— }

(Give place and date.)

Personally appeared, C. D., agent of the A. B. Co., signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, and the free act and deed of the A. B. Co. Before me.¹

C. D.
(Official title.)

1. See note 1 to form No. 19.

No. 21.

Certificate of acknowledgment, by individual, of conveyance of lands situated in Territory of Dakota.

(Civ. Code, Dakota Ter., Comp. Laws, §§ 3287, '8.)

(TERRITORY) OF (DAKOTA), } ss.:
County of —, }

On this — day of —, in the year 1—, before me, a (here insert the name and quality of the officer) personally appeared A. B. (and E. F.), known to me (or, proved to me on the oath of C. D.), to be the (*) person (or, persons) who is (or, are) described in, and who executed the (within) instrument, and who (severally) acknowledged to me that he (or, they) executed the same.¹

[L. S.]²I. J.
(Official title.)

1. First. The acknowledgment or proof of an instrument conveying lands situated in Dakota may be made at any place within the Territory before a justice or clerk of the Supreme Court, or before a notary public, or it may be made before a judge or clerk of a court of record, the mayor of a city, a register of deeds, a justice of the peace, or United States Circuit or District Court commissioner, a county clerk or county auditor within the judicial district, county, subdivision or city for which such officer was appointed or elected. (Civ. Code, Dakota Ter., Compiled Laws, §§ 3277, 3278.)

Second. If made without the Territory, and within the United States, and within the jurisdiction of the officer, before a justice, judge or clerk of any court of record of the United States, or of any State or Territory, or before a notary public, or a commissioner duly appointed for the purpose by the governor of the Territory, or before any other officer of the State or

Territory where such acknowledgment, etc., is made, who is authorized by its laws to take such acknowledgment, etc. (Id., § 3279.)

Third. If made without the United States, it may be made before a minister, commissioner or *charge des affaires* of the United States, resident and accredited in the country where the proof or acknowledgment is taken, or before a consul, vice-consul or consular agent of the United States, resident in the country where such proof or acknowledgment is made, or before a judge of a court of record of the country where the proof or acknowledgment is made, or a notary public of such country, and in case any of the foregoing officers are by law authorized to appoint a deputy, then such proof or acknowledgment may be taken before such deputy in the name of the principal. (Id., § 3280.)

Fourth. Proof of the execution of an instrument when not acknowledged, may be made either by the party or

parties, or either of them, executing it, or by a subscribing witness, or by other witnesses in the cases mentioned in §§ 3285 and 3286. (Id., § 3283.) If made by a subscribing witness, he must be personally known to the officer taking such proof to be the person who signed such instrument as a witness, or must be proved to be such person by the oath of a credible witness. The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness. (Id., § 3284.)

Fifth. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness if there is one, when the party and all the subscribing witnesses, if any, are dead or are non-residents of the Territory, or when the place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence, or conceals himself and cannot be found by the officer with due diligence, in attempting to serve the subpoena or attachment, or in case of the continued failure or refusal of the witness to testify, for the space of an

hour after his appearance. (Id., § 3285; see, also, Id., § 3286.)

2. The acknowledgment etc., must be authenticated by the certificate of the officer taking the same, signed by him, adding his official title, and, if the officer is required by law to have an official seal, such seal must be affixed (by impression). Judges and clerks of courts of record must affix to their certificates the seals of their proper court; and mayors of cities the seal thereof. (Id., § 3288, subd. 4.)

If such certificate is made by a justice of the peace, in order to be used in any other county than the one in which he resides, it must be accompanied by a certificate, under the hand and seal of the clerk of the District Court, or of any other county court of record of the county where such justice resides, showing that, at the time of taking such acknowledgment, such justice was authorized to take the same, and that the clerk is acquainted with the handwriting of the justice, and believes the signature to the original certificate to be genuine. (Id., subd. 5.)

The wife need not make any separate acknowledgment, and the form of acknowledgment is the same for both husband and wife. (Id., § 3282.)

See, also, notes to forms Nos. 80 and 122.

No. 22.

Certificate of acknowledgment of execution of conveyance of lands situated in Dakota Territory, by attorney in fact.

(Civ. Code, Comp. Laws, Dakota Ter., §§ 3288, etc.)

As in last form No. 21 to (*), and from thence as follows: person who is described in and whose name is subscribed to the within instrument, as the attorney in fact of A. B.,

and acknowledged to me that he subscribed the name of A. B. thereto as principal, and his own name as attorney in fact.¹

[L. S.]

J. K.
(Official title.)

1. See notes to form No. 21.

No. 23.

Certificate of acknowledgment of conveyance of real property situated in Dakota Territory, by corporation.

(Civ. Code, Dakota Ter., Comp. Laws, §§ 3288, etc.)

As in form No. 21 to (*), and from thence as follows: president (or, the secretary) of the (name of corporation) the corporation that is described in, and that executed the within instrument, and acknowledged to me that such corporation executed the same.¹

[L. S.]

E. T.
(Official title.)

1. See notes to form No. 21.

No. 24.

Certificate of proof of conveyance of land situated in Dakota Territory, by subscribing witness.

(Civ. Code, Dakota Ter., Comp. Laws, § 3284.)

(TERRITORY) OF (DAKOTA), } ss.:
County of —,

On this — day of —, in the year 1—, before me, personally appeared C. D. (*), a subscribing witness to the (within) instrument, who is personally known to me (or, proved by the oath of E. F., a credible witness) to be the person (or, one of the persons) who signed such instrument as a witness (or, as witnesses), who being by me duly sworn did depose and say: That A. B., the person whose name is subscribed to said instrument as a party, is the person de-

scribed in it, and that said A. B. executed the said instrument, and that he, said C. D., subscribed his name thereto as a witness.¹

[L. S.]

F. G.
(Official title.)

1. See notes to form No. 21.

No. 25.

Certificate of proof by party to conveyance of land situated in Dakota Territory.

(Civ. Code, Dakota Ter., Comp. Laws, § 3284.)

As in last form No. 24, to (*), and from thence as follows :
who is personally known to me (or, proved by the oath of E. F.) to be the person (or, one of the persons) who is described in and who executed the (foregoing) instrument, who, being by me duly sworn, did depose and say : That he is a party to said instrument, and that he executed said instrument.¹

[L. S.]

F. G.
(Official title.)

1. See notes to form No. 21.

No. 26.

Certificate of acknowledgment, by individual, or by husband and wife, of execution of conveyance of land situated in State of Delaware.

(Rev. Stats. Delaware, chap. 83, § 9.)

STATE OF (DELAWARE), }
County of —, } ss.:

Be it remembered that on this — day of —, A. D., 1—, personally came before me, A. B. (naming his official title, as in form No. 6) C. D. (and E. D., his wife), party (or, parties) to this indenture, known to me personally (or, proved upon the oath of G. H.) to be such, and (severally) acknowledged this indenture to be his (or, their) act and deed ; (and the said E. D., being at the same time privately ex-

amined by me apart from her husband, acknowledged that she executed the said indenture willingly, without compulsion or threats or fear of her husband's displeasure).

Given under my hand and seal of office, the day and year aforesaid.¹

[L. S.]

A. B.

(Official title.)

1. The wife must join in the conveyance to bar her dower, and the husband to bar his curtesy.

Within the State a deed concerning lands, tenements and hereditaments may be acknowledged in any county, by any party to the same, in the Superior Court, or before the chancellor or any judge or notary public, or before two justices of the peace for the same county. Such deed may also be acknowledged in the said Superior Court by attorney, by virtue of a power contained in it or separate from it, the power being first proved in the said court. Also said deed may be proved in the said court by one or more of the subscribing witnesses. (Rev. Stats. Delaware, chap. 83, § 3.)

If proved or acknowledged without the State, such proof or acknowledgment may be made before any consul-general, consul, vice-consul, consular agent or commercial agent of the United States, duly appointed in any foreign country at the places of their respective official residence; before the judge of any District or Circuit Court of the United States, the chancellor or any judge of a court of record of any State, Territory or country, or the mayor or chief officer of any city or borough, and certified under the hand of such chancellor, judge, mayor or officer, and the seal of his office, court, city or borough, by

certificate indorsed upon or annexed to the deed; or such acknowledgment or proof may be taken in any such court and certified under the hand of the clerk or other officer of said court and the seal of said court in like manner. In case of such certificate by a judge, the seal of his court may be affixed to his certificate, or to a certificate of attestation of the clerk or keeper of the seal. Such acknowledgment may also be taken by any commissioner of deeds for that State, or by a notary public of any State or Territory, or of the District of Columbia. (Id., § 10, as amended by chap. 212 of Laws of 1883, and by chap. 212 of Laws of 1887.)

Deeds must be recorded within three months after sealing and delivery, to avail against creditors, mortgagees or *bona fide* purchasers, without notice. (Id., § 17, as amd. by Laws of 1883, chap. 213.)

Two justices of the peace when taking or certifying an acknowledgment or private examination must be together, and a certificate of acknowledgment and private examination taken before them may be according to the following form, viz.:

THE STATE OF DELAWARE, }
— county, } ss..

Be it remembered, that on the — day of —, in the year of our Lord one thousand eight hundred and —, — personally came before the sub-

scriber, two of the justices of the peace for — county aforesaid, C. D. and B. D., his wife, parties to this indenture, known to us personally (or proved on the oath of —) to be such, and severally acknowledged said indenture to be their act and deed respectively, and that the said B. D. being at the same time personally examined by us, apart from her husband, acknowledged she executed the said indenture willingly, without compulsion or threats, or fear of her husband's displeasure.

Witness our hands the day and year aforesaid.

If the instrument acknowledged be not an indenture, the word "instrument" may be substituted for the word "indenture" in the form; if it be not under seal, the words "and deed" in the form must be omitted. If an acknowledgment only or private examination only be taken, the form must be varied according to the case; and so of other cases requiring a variance, the form being given for general direction. The certificate of acknowledgment and of private examination may, in all cases, be according to the foregoing form. (Id., § 9.)

No. 27.

Certificate of acknowledgment, by corporation, of execution of conveyance of land situated in the State of Delaware.

(Rev. Stats. Delaware, chap. 83, § 6, as amended by chap. 521 of Laws of 1881.)

STATE OF (DELAWARE), } ss.
County of —,

Be it remembered that on this — day of —, A. D., 1—, personally came before me, A. B., a (giving official title as in form No. 6), C. D., president (or, presiding officer, as the case may be), of the D. M. Company, a corporation of the State of Delaware, party to this indenture, known to me personally (or, proved upon the oath of C. D.), to be such, and acknowledged this indenture to be his act and deed, and the acts and deeds of the said corporation; that the signature of the said president (or, presiding officer) is in his own proper handwriting; that the seal affixed thereto is the common or corporate seal of the said corporation or company; and that his act of sealing, executing, acknowledging and delivering of said indenture is duly authorized by resolution of the directors (or,

trustees, or name other managers) of said corporation or company.

Given under my hand and seal of office the day and year aforesaid.¹

[SEAL.]

A. B.
(Official title.)

1. A deed concerning lands and tenements, executed by a corporation, may be executed and acknowledged before the chancellor or any judge of the State, or a judge of the District or Circuit Court of the United States, or a notary public, or two justices of the peace of the same county, by the president or other presiding officer, duly authorized by resolution of the directors, trustees or other managers, or by the legally constituted attorney of such corporation. (Rev. Stats. of Delaware, chap. 83, § 6, as amended by chap. 521 of the Laws of 1881.)

As to acknowledgment without the State, see § 10 of same chapter, cited in note to form No. 26.

No. 28.

Certificate of acknowledgment of conveyance of land, executed by husband and wife, situated in the District of Columbia.

(Rev. Stats. of U. S. relating to Dist. of Columbia, §§ 442, 461.)

STATE OF —, }
— county, } ss.:

I, A. B., a (here give title in full), in and for the county of — aforesaid, in the State of —, do hereby certify that C. D., and E. D. (his wife), parties to a certain deed, bearing date on the — day of —, A. D., 1—, and hereto annexed, personally appeared before me, in the county aforesaid, the said C. D. and E. D., being personally well known to me as (or proved by oaths of credible witnesses before me to be) the persons who executed the said deed, and acknowledged the same to be their act and deed; [and the said E. D., wife of the said C. D., being by me examined privily and apart from her said husband, and having the deed aforesaid fully explained to her, acknowledged

the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it.]

Given under my hand and seal, this — day of —, A. D., 1——.¹

A. B. [SEAL.]

1. Acknowledgments of deeds may be made before any of the following named officers of the State, district, county or Territory within the United States, in which the person making the acknowledgment may be, namely:

First. Before any judge of a court of record and of law. Second. Before any chancellor of a State. Third. Before any judge of the Supreme, Circuit, District or Territorial Courts of the United States. Fourth. Before any justice of the peace. Fifth. Before any notary public. Sixth. Before any commissioner of the Circuit Court of the District. (Rev. Stats. of U. S., relating to Dist. of Columbia, § 441.)

The officer taking an acknowledgment shall annex to the deed a certificate under his hand and seal to the following effect:

— *county* (or *city*, etc.), to-wit:

I, A. B., a justice of the peace (or other prescribed officer, giving his title), in and for the county (or city, or parish, or district) aforesaid, in the State (or Territory or district) of —, do hereby certify that C. D., a party (or C. D. and E. D., etc., parties) to a certain deed, bearing date on the — day of —, and hereto annexed, personally appeared before me in the county (or city, etc.), aforesaid, the said C. D. and E. D. being personally well known to me, as (or proved by the oaths of credible witnesses before me to be) the person (or persons) who executed the said deed,

and acknowledged the same to be his (her or their) act and deed.

Given under my hand and seal this — day of —, 1——.

A. B. [SEAL.]

(Id., § 442.)

When acknowledgments are made beyond the limits of the district within the United States, the certificate of the same shall be accompanied by a certificate of the register, clerk, or other public officer having cognizance of the fact, under his official seal, that, at the date of the acknowledgment, the officer taking the same was, in fact, the officer he purported to be. (Id., § 443.)

Deeds made in a foreign country may be executed and acknowledged before any judge or chancellor of any court, master, or master extraordinary in chancery, or notary public, or before any secretary of legation, or consular officer of the United States. (Id., § 444.)

When acknowledgments are made before an officer in a foreign country, other than a secretary of legation, or consular officer of the United States, the official character of the person taking the acknowledgment shall be certified in the manner prescribed in section 442. (Id., § 445.)

When any married woman shall be a party executing a deed for the conveyance of real estate or interest therein, and shall only be relinquishing her right of dower, or when she shall be a party with her husband to

any deed, it shall be the duty of the officer authorized to take acknowledgments, before whom she may appear, to examine her privily and apart from her husband, and to explain to her the deed fully. (Id., § 450.)

If, upon such privy examination and explanation, she shall acknowledge the deed to be her act and deed, and shall declare that she had willingly signed, sealed and delivered the same, and that she wished not to retract it, the officer shall certify such examination, acknowledgment and declaration by a certificate annexed to the deed, and under his hand and seal, to the following effect:

— county (or city, etc.), to-wit:

I, A. B., a justice of the peace (or other prescribed officer, giving title) in the county (or, city, etc.) aforesaid, in the State (or, Territory, etc.) of —, do hereby certify that C. D., the wife

of E. F., party to a certain deed bearing date on the — day of —, and hereunto annexed, personally appeared before me, in the county (or, city, etc.) aforesaid, the said C. D. being well known to me as (or, proved by the oaths of credible witnesses before me to be) the person who executed the said deed, and being, by me, examined privily and apart from her husband, and having the deed aforesaid fully explained to her, she, the said E. F., acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and seal, this — day of —.

A. B. [SEAL.]

Commissioners of deeds for the District of Columbia and the States and Territories are given power to take acknowledgments by the act of Congress passed June 7, 1878.

No. 29.

Certificate of acknowledgment of conveyance of real estate situated in the State of Florida.

(Laws of Florida, chap. 32, § 16.)

STATE OF (FLORIDA), }
County of —, } ss.:

Before me personally came A. B., to me well known as (or, to me satisfactorily proven to be) the person described in and who executed the foregoing deed of conveyance and acknowledged that he executed the same for the purposes therein expressed, and prays that it may be admitted to record.

In witness whereof, I have hereunto set my hand and seal, this — day of —, A. D., 1—.

[L. S.]

C. D.
(Official title.)

1. The acknowledgment may be made out of the State and within the United States, or the execution proved by a subscribing witness: Be-

fore a commissioner appointed by the governor of the State, or any judge, or any clerk of a court of record, or a notary public, justice of the peace or other officer authorized, by the law of the State, Territory or district, to take the acknowledgment of deeds, therein. (McClellan's Dig., Laws of Florida, chap. 32, § 16.)

If made out of the country, it may be taken by a notary public, minister plenipotentiary, extraordinary or resident, charge d'affaires, commissioner or consul of the United States, appointed to reside therein, or by a

commissioner appointed by the governor of the State of Florida for that purpose. Such acknowledgment shall be certified therein by the officer taking the same, and his seal of office shall be affixed to his certificate. (Id., § 17.)

If made within the State it must be acknowledged or its execution proved upon oath by at least one of the subscribing witnesses thereto, before the officer required by law to record the same, or before some judicial officer of the State. (Id., chap. 32, § 9.)

No. 30.

Certificate of acknowledgment by married woman of execution of conveyance of real estate situated in the State of Florida.

(Laws of Florida, chap. 32, § 16.)

STATE OF (FLORIDA), } ss.:
County of —, }

Before me personally came C. B., to me well known as (or, to me satisfactorily proven to be) the wife of A. B., a person described in and who executed the foregoing conveyance, who, being by me examined separate and apart from her husband, the said A. B., acknowledged that she made herself a party to the foregoing deed of conveyance, for the purpose of relinquishing all her right, title, dower, and interest, either legal or equitable, in and to the said premises, and that she executed the same freely and voluntarily without fear, restraint or compulsion from her said husband, the said A. B.

In witness whereof, I have hereunto set my hand and seal, this — day of —, A. D., 1—.

[L. S.]

C. D.
(Official title.)

1. This acknowledgment by a married woman is required to be made separate and apart from her husband; unless so acknowledged, no estate passes. See, also, note to form No. 29.

No. 31.

Certificate of acknowledgment of conveyance of real estate situated in the State of Georgia.

(Code of Georgia, § 2706.)

STATE OF (GEORGIA), }
County of —, } ss.:

Before me, A. B., a (here insert title of officer), personally came J. D., to me known to be the individual whose signature is affixed to the foregoing deed, who, being sworn, says that he executed the foregoing deed, for the purpose therein mentioned, and acknowledges the same to be his true and lawful act.¹

(Signed), J. D.

Sworn to and subscribed before me, this — day of —,
I —.

[SEAL.]

A. B.

(Official title.,

1. To authorize the record of a deed is acknowledged, in the presence of either of the above-mentioned officers, that fact, certified on the deed be attested :

If executed out of the State, by a commissioner of deeds for the State of Georgia ; or, a consul or vice-consul of the United States (the certificates of those officers being evidence of the fact), or by a judge of a court of record in the State where it is executed, with a certificate of the clerk, under the seal of such court, of the genuineness of the signature of such judge. A deed of lands in the State must be in writing, signed by the maker, attested by at least two witnesses, and delivered to the purchaser, or some one for him, and be made on valuable or good consideration. The consideration of a deed may always be inquired into when the principles of justice require it. (Id., § 2690.)

If executed in the State it must be attested by a judge of a court of record of the State, or a justice of the peace or notary public, or clerk of the Superior Court, in the county in which these last-mentioned officers respectively hold their appointments ; or, if subsequent to its execution the The word " deed " implies that it must be sealed. See, also, Reinhardt v. Miller (22 Ga. 402). With the exception of official seals, a *scrawl*, or any other mark intended as a seal, shall be held as such. (Id., § 5.)

No. 32.

Proof by subscribing witness of execution of deed of real property situated in the State of Georgia.

(Code of Georgia, § 2707.)

STATE OF (GEORGIA), }
County of ———, } ss.:

Before me, A. B., a (insert title of officer), personally came J. S., to me known to be the individual whose name is signed to the foregoing deed as one of the witnesses thereto, who, being sworn, says that he was present at the time when said deed was executed; that he saw the same signed, sealed and delivered by J. D., whose signature is thereto affixed as grantor; that R. R., the other subscribing witness thereto, was likewise present at said time, and witnessed said execution of said deed, and that he, the said J. S. and the said R. R., then and there signed the same as attesting witnesses.¹

(Signed), J. S.
 (Name of grantor.)

Sworn to and subscribed before me, this ——— day of ———,
 I——.

[L. S.]

A. B.
 (Title of officer.)

1. See note 1 to last form, No. 31.

No. 33.

Certificate of acknowledgment of conveyance of real property situated in the State of Idaho.

(Rev. Stats. Idaho, § 2958.)

STATE OF (IDAHO), }
County of ———, } ss.:

On this ——— day of ———, in the year of 1——, personally appeared before me, A. B., a (title of officer) C. D. (and B. D.), known (or, proved to me on the oath of E. F.) to be the per-

son (or, persons) whose name (or names) is (or, are) subscribed to the within instrument, and acknowledged to me that he (or, they) executed the same.¹

A. B.
(Official title.)

1. The above is the form of acknowledgment required by the laws of the Territory of Idaho, which laws will remain in force until changed or amended by the State legislature. (Rev. Stats. of Idaho, § 2958.)

A conveyance of an estate in real property may be made by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing. (Id., § 2920.)

To entitle it to record it must be witnessed by at least one witness, and acknowledged or proved.

The proof or acknowledgment of an instrument may be made at any place within the Territory before a justice or clerk of the Supreme Court. (Id., § 2950.)

Or within the city, county or district for which the officer was elected or appointed, before either: 1. A judge or clerk of any court of record; or, 2. A county recorder; or, 3. A notary public; or, 4. A justice of the peace. (Id., § 2951.)

Without the Territory, but within the United States and within the jurisdiction of the officer it may be made, before either: 1. A justice, judge or clerk of any court of record

of the United States; or, 2. A justice, judge or clerk of any court of record of any State or Territory; or, 3. A commissioner appointed by the governor of the Territory of Idaho for that purpose; or, 4. A notary public; or, 5. Any other officer of the State or Territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment.

Without the United States it may be made before either: 1. A minister, commissioner or charge d'affaires of the United States, resident or accredited in the country where the proof or acknowledgment is made; or, 2. A consul or vice-consul of the United States, resident in the country where the proof or acknowledgment is made; or, 3. A judge of a court of record of the country where the proof or acknowledgment is made; or, 4. Commissioners appointed for such purpose by the governor of the Territory of Idaho, pursuant to statute. (Id., § 2952.)

When any of the officers mentioned in the four preceding sections are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy, in the name of his principal. (Id., § 2954.)

No. 34.

Certificate of acknowledgment by married woman of conveyance of real property situated in State of Idaho.

(Rev. Stats. of Idaho, § 2960.)

STATE OF (IDAHO), }
County of —, } ss.:

On this — day of —, in the year of 1—, before me, A. B., a (here insert the quality of officer), personally ap-

peared —, known to me (or, proved to me on the oath of —) to be the (*) person whose name is subscribed to the within instrument, described as a married woman; and upon an examination without the hearing of her husband, I made her acquainted with the contents of the within instrument, and thereupon she acknowledged to me that she executed the same, and that she does not wish to retract such execution.¹

A. B.

(Official title.)

1. See note 1 to form No. 33.

No. 35.

Certificate of acknowledgment of instrument of conveyance by corporation of real property situated in the State of Idaho.

(Rev. Stats. of Idaho, § 2958.)

As in form No. 34, to (*), and from thence as follows: president (or, the secretary) of the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.¹

A. B.

(Official title.)

1. See sec. 2959 of Revised Statutes of Idaho, and see note 1 to form No. 33.

No. 36.

Certificate of acknowledgment of conveyance of real property situated in the State of Illinois.

(Rev. Stats. of Illinois, chap. 30, § 26.)

STATE OF (ILLINOIS),
County of (name of county), } ss.:

I, A. B., a (here give officer's official title), do hereby certify that C. D., and M. D. (his wife), personally known to me to be the same person (or, persons) whose name (or, names) is (or, are) subscribed to the foregoing instrument, appeared before me this day, in person, and acknowledged

that he (she or they) signed, sealed and delivered the said instrument, as his (her or their) free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and private (or, official) seal, this — day of —, A. D. 1——.¹

[SEAL.]

(Signature of officer.)

(Official title.)

1. A married woman may acknowledge in the same manner as if she were unmarried, and with the like effect. (Rev. Stats. of Illinois, chap. 30, § 19.)

Deeds, mortgages, conveyances, releases, powers of attorney, or other writings of or relating to the sale, conveyance, or other disposition of real estate, or any interest therein, whereby the rights of any person may be affected in law or in equity, may be acknowledged or proved before some one of the following courts or officers, viz.:

First. When acknowledged or proved within the State, before a master in chancery, notary public, United States commissioner, circuit or county clerk, justice of the peace or any court of record having a seal, or any judge, justice or clerk of any such court. When taken before a notary public or United States commissioner, the same shall be attested by his official seal; when taken before a court or the clerk thereof, the same shall be attested by the seal of such court; and when taken before a justice of the peace, there shall be added the certificate of the county clerk, under his seal of office, that the person taking such acknowledgment or proof was a justice of the peace in said county at the time of taking the same. If the justice of the peace reside in the county where the lands mentioned in the instru-

ment are situated, no such certificate shall be required.

Second. When acknowledged or proved without the State, and within the United States or their Territories, or the District of Columbia, before a justice of the peace, a notary public, United States commissioner, commissioner to take acknowledgment of deeds, mayor of a city, clerk of a county, or before any judge, justice or clerk of the Supreme, Circuit, Superior, District, County or Common Pleas Court, of any of the United States or their Territories. When such acknowledgment or proof is made before a notary public, United States commissioner, commissioner of deeds, or clerk, it shall be certified by such officer, under his seal of office. If before the mayor of a city, it shall be certified under the seal of the city. If before a justice of the peace, there shall be added a certificate of the proper clerk, under the seal of his office, setting forth that the person before whom such proof or acknowledgment was made was a justice of the peace at the time of taking the same. An acknowledgment or proof may be made in conformity with the laws of the State, Territory or district where it is made; Provided, that if any clerk of any court of record, within such State, Territory or district, shall under his hand and the seal of such court, certify that such deed or instrument is exe-

cuted and acknowledged or proved in conformity with the laws of such State, Territory or district, or it shall so appear by the laws of such State, Territory or district, duly proved and certified copies of the record of such deeds, mortgages, or other instruments relating to real estate, heretofore or hereafter made and recorded in the proper county, may be read in evidence as in other cases of such certified copies, upon such a certificate of conformity to the laws of the State, Territory or district where such deeds, mortgages or other instruments were made and acknowledged, being exhibited therewith or annexed thereto.

Third. When acknowledged or proved without the United States, then before any court of any republic, State, kingdom or empire having

a seal, or any mayor, or chief officer of any city or town having a seal, or before any minister or secretary of legation, or consul of the United States in any foreign country, attested by his official seal, or before any officer authorized by the laws of such foreign country to take acknowledgments of conveyances of real estate, if he have a seal, such deed to be attested by the official seal of such court or officer. And in case such acknowledgment or proof is taken other than before a court of record, or mayor, or chief officer of a town having a seal, proof that the officer taking such acknowledgment was duly authorized by the laws of his country so to do, shall accompany the certificate of such acknowledgment. (Rev. Stats. Illinois, chap. 30, § 20.)

No. 37.

Certificate of acknowledgment of chattel mortgage in State of Illinois.

(Rev. Stats. of Illinois, chap. 95, § 2.)

This (name of instrument) was acknowledged before me by (name of grantor, when the acknowledgment is made by a resident insert the words "and entered by me") this — day of —, 1—. ¹

Witness my hand and seal.

[SEAL.]

(Name of officer.)
(Official title.)

1. See section 2 of chapter 95 of the Revised Statutes of Illinois, as to this acknowledgment.

No. 38.

Certificate of acknowledgment of conveyance of real property situated in the State of Indiana.

(Rev. Stats. of Indiana, § 2947.)

STATE OF (INDIANA), }
County of —, ss.:

Before me, A. B., a (stating official character) in and for said county, personally came A. B. (or, A. B. and C. B., his wife) the grantor (or, grantors) in the foregoing deed, and acknowledged the execution of the same.

Witness my hand and official seal, at —, this — day of —, 1—.¹

[SEAL.]

(Signature and title.)

1. This acknowledgment may be taken by any judge or clerk of a court of record, justice of the peace, auditor or recorder, notary public, mayor of a city in the State of Indiana or other State, or by a commissioner in another State or Territory, appointed by the governor of Indiana, or any minister, charge d'affaires, or consul of the United States, in any foreign country, and by county surveyors of the State of Indiana. (Rev. Stats. of Indiana, §§ 2933, 5958.)

All deeds may be proved according to the rules of the common law, before any officer authorized to take acknowledgments, and being so proved, shall be entitled to record. (Id., § 2936.)

For form of certificate of such proof, see next form, No. 39.

To entitle to record in the State,

conveyances acknowledged out of the State, and within the United States, the same must be certified by the clerk of any court of record of the county in which the officer receiving the acknowledgment resides, and attested by the seal of said court, but an acknowledgment before an officer having an official seal, attested by his official seal, shall be sufficient without such certificate. (Id., § 2935.)

An acknowledgment of any conveyance in a foreign country, as hereinbefore provided, requires no certificate other than the official seal of the officer taking such acknowledgment. (Id., § 2937.)

It shall not be necessary for a married woman to acknowledge her deed in any form other than that required by unmarried persons. (Id., § 2938.)

No. 39.

Certificate of proof of conveyance of real property situated in the State of Indiana.

(Rev. Stats. of Indiana, § 2936.)

STATE OF (INDIANA), } ss.:
County of —, }

Be it remembered, that on the — day of —, 1—, before me, E. F., a (insert full official title), in and for said (county, city, etc., as the case may be), duly commissioned and qualified, personally appeared G. H. (or, G. H. and I. J.), competent witnesses of lawful age, and being by me first duly sworn, deposed and said: (here state facts testified, viz., that the witness attested the execution and delivery of the foregoing deed as a subscribing witness, or that he saw it executed and delivered, or that the grantors exhibited and delivered the deed in witness's presence, and admitted to him that, etc.), and that grantor(s) the said A. B. (and C. B., his wife) was (or, were) at the time (of, etc.) of full age and sound mind and memory.

In witness whereof, etc.¹

[SEAL.]

(Signature and official title.)

1. See note 1 to last form, No. 38.

No. 40.

Certificate of acknowledgment of conveyance of real property situated in Indian Territory.

(INDIAN TERRITORY), } ss.:
County of —, }

On this — day of —, in the year 1— before me, A. M., a (giving official title), personally came A. B. (and C. B., his wife), to me known to be the individual (or, individuals) described in and who executed the foregoing (or, within) in-

strument, and to me (severally) acknowledged the execution thereof by him (or, by them), as and for his (or, their) act and deed.¹

[SEAL.]

A. M.
(Official title.)

1. Acknowledgments may be taken within the United States, before any within the Indian Territory, by a court of the United States, or of any judge or clerk of a court, United State or Territory having a seal, or States commissioners and notaries public; without the Territory, but the clerk thereof, or any notary public.

No. 41.

Certificate of acknowledgment, by grantor, of conveyance of real property situated in the State of Iowa.

(Rev. Code of Iowa, § 1958.)

STATE OF (IOWA), } ss..
County of —, }

On this — day of —, in the year 1—, before me, C. F., a (stating the title of the person before whom the acknowledgment is taken), personally came, A. B., to me personally known (or, to me proved by J. K., a credible witness), to be the identical person whose name is (*) affixed to the (foregoing) instrument, as grantor, and acknowledged the said instrument to be his voluntary act and deed.¹

J. K.
(Official description.)

1. All deeds or other conveyances of lands in the State of Iowa must be signed and acknowledged or proved and certified to. Private seals are abolished. (Rev. Code Iowa, § 2112.)

The following officers are authorized to administer oaths and take and certify acknowledgments of instruments in writing: Each judge of the Supreme, District, or Circuit Courts, respectively; the clerk of the Supreme Court; each clerk and deputy clerk of the District and Circuit Courts; each county auditor or his deputy; each justice of the peace and notary public within his county. (Id., § 277.)

When made or acknowledged out of that State but within the United States, it shall be acknowledged before some court of record or officer holding the seal thereof, or before some commissioner appointed by the governor of this State to take the acknowledgment of deeds, or before some notary public or justice of the peace; and when made by a justice of the peace, a certificate under the

official seal of the proper authority of the official character of said justice, and of his authority to take such acknowledgment, and of the genuineness of his signature shall accompany said certificate of acknowledgment. (Id., § 1956.) See *Jones v. Berkshire* (15 Iowa, 248).

When made or acknowledged without the United States, it may be acknowledged before any ambassador, minister, secretary of legation, consul, charge d'affaires, consular agent, or any other officer of the United States in a foreign country, who is authorized to issue certificates under the seal of the United States. Said instruments may also be acknowledged or proven before any officer of a foreign country who is authorized by the laws thereof to certify to the acknowledgments of written documents; but the certificate of acknowledgment by a foreign officer must be authenticated by one of the above-named officers of the United States, whose official written statement that full faith and credit is due to the certificate of such foreign officer shall be deemed sufficient evidence of the qualification of said officer to take acknowledgments and to certify thereto, and of the genuineness of his signature or seal, if he have any. All instruments in writing, already executed in accordance with the provisions of this section, are hereby declared effectual and valid in law, and to be evidence in any court of this State. (Id., § 1957.)

The court or officer taking the acknowledgment must indorse upon the deed or other instrument, a certificate setting forth the following particulars:

First. The title of the court or person before whom the acknowledgment was taken.

Second. That the person making the acknowledgment was personally known to at least one of the judges of the court, or to the officer taking the acknowledgment, to be the identical person whose name is affixed to the deed as grantor, or that such identity was proved by at least one credible witness, naming him.

Third. That such person acknowledged the instrument to be his voluntary act and deed. (Id., § 1958.) See *Shafanburg v. Bishop* (35 Iowa, 60, 62); *Willard v. Cramer* (36 id. 22); *Reynolds v. Kingsbury* (15 id. 238).

The execution of any deed, mortgage, or other instrument in writing, executed by any attorney in fact, may be acknowledged by the attorney executing the same. (Id., § 1962.)

The court or person taking the acknowledgment must indorse upon such instrument a certificate setting forth the following particulars:

First. The title of the court or person before whom the acknowledgment was taken.

Second. That the person making the acknowledgment was personally known to at least one of the judges of the court, or to the officer taking the acknowledgment, to be the identical person whose name is subscribed to the instrument as attorney for the grantor or grantors therein named, or that such identity was proved to him by at least one credible witness to him personally known and therein named.

Third. That such person acknowledged said instrument to be the act and deed of the grantor or grantors, therein named by him, as his or their attorney thereunto appointed, voluntarily done and executed. (Id., § 1963.)

There is no particular mode prescribed for acknowledgments in case

of corporations or joint-stock associations; the same rule should be followed in taking the acknowledgment of officers of such corporations or associations as is laid down for acknowledgment by an attorney in fact. (Id.)

There need be no separate examination of a married woman. (Id.)

Any deed or conveyance or other instrument in writing, by which real estate in the State of Iowa shall be conveyed or incumbered, if acknowledged within the State, must be so before some court having a seal, or some judge or clerk thereof, or some justice or notary public. (Id., § 1955.)

No. 42.

Certificate of acknowledgment, by attorney in fact, of conveyance of real property situated in the State of Iowa.

(Rev. Code of Iowa, §§ 1963, 1962.)

As in form No. 41, to (*), and from thence as follows: subscribed to the (foregoing) instrument as attorney for the grantor (or, grantors) therein named, and acknowledged said instrument to be the act and deed of said grantor (or, grantors) therein named, as his (or, their) attorney thereunto appointed, voluntarily done and executed.

Witness, etc. (as in last form, No. 41).¹

(Signature, etc., as in last form, No. 41.)

1. See note 1 to last form, No. 41, and sections 1963 and 1962 of the Revised Code of Iowa.

No. 43.

Certificate of acknowledgment of conveyance of real property situated in State of Kansas.

(Gen. Stats. of Kansas of 1889, ¶ 1120.)

STATE OF —, }
County of —, } ss.:

On this — day of —, 1—, before me, C. D., a (title of officer) personally came A. B., to me personally known to be the same person described in and who executed the (foregoing) instrument, and to me acknowledged that he executed the same.¹

J. K.

(Official title.)

1. All conveyances and other instruments required to be acknowledged within the State of Kansas, must be acknowledged before some

court having a seal, or some judge, justice or clerk thereof, or some justice of the peace, notary public, county clerk, register of deeds or mayor or clerk of an incorporated city. (Gen. Stats. of Kansas (1889), 1118.)

If acknowledged out of the State, the acknowledgment must be made before some court of record, or clerk or officer holding the seal thereof, before a commissioner to take the acknowledgment of deeds, appointed by the governor of the State of Kansas, or before some notary public or justice of the peace, or before any consul of the United States resident in a foreign port or country. The acknowledgment before a justice of the peace of another State must be accompanied by a certificate of his official character under the hand of the clerk of some court of record, and the seal of the court. (Id. 1119.)

Any instrument affecting real estate in that State, executed and acknowledged or proved in another State, Territory or country in conformity with the laws thereof, or in conformity with the laws of that State, is as valid as if executed in

that State, and in accordance with its laws. (Id. 1134.)

An acknowledgment by a married woman need not be made upon her separate examination. (Id. 3753; 9 Kans. 532.)

A notary public taking an acknowledgment within the State should authenticate the same with his notarial seal. (*Meskimen v. Day*, 35 Kans. 46.)

The court or officer taking the acknowledgment must indorse upon the deed a certificate showing, in substance, the title of the court or officer before whom it was taken, that the person making it was personally known to the court, or to the officer taking the same, to be the same person who executed the instrument, and that such person acknowledged the execution of the same. (Same Statute, 1120.)

The certificate of proof or acknowledgment may be given under seal or otherwise, according to the mode by which the courts or officers granting the same usually authenticate their official acts. (Id. 1124.)

See, also, as to proof of conveyance, etc., Id. 1121-1124.

No. 44.

Certificate of acknowledgment, by husband and wife, of conveyance of real property in Kentucky, taken out of that State.

(Gen. Stats. of Kentucky, chap. 24, § 21, subd. 2.)

COMMONWEALTH (OR KINGDOM OF —),
County or Town, or City or Department or Parish of —, } *sect. :*

I, A. B., a (here give his title) do certify, that this instrument of writing from C. D., and wife, E. F. (or, from E. F., wife of C. D.), was this day produced to me by the parties,

(which was acknowledged by the said C. D. to be his act and deed), and the contents and effect of the instrument being explained to the said E. F., by me, separately and apart from her husband, she thereupon declared that she did freely and voluntarily execute and deliver the same, to be her act and deed, and consented that the same might be recorded.¹

Given under my hand and seal of office, this — day of

—, 1—.

[SEAL.]

A. B.

1. A married woman may convey any real or personal property she owns, or has an interest in, legal or equitable, in possession, reversion or remainder.

The conveyance may be by the joint conveyance of husband and wife, or by a separate instrument, but in the latter case the husband must first convey, or have already conveyed. (Gen. Stats. of Kentucky, chap. 24, § 20.) See *Stuart v. Wilder* (17 B. M. 58).

Previous to an acknowledgment of a conveyance by a married woman, the officer taking the acknowledgment must explain to her the contents and effect of the conveyance separate and apart from her husband, and thereupon, if she freely and voluntarily acknowledge the same, and is willing for it to be recorded, the officer shall certify the same as follows:

First. When the acknowledgment shall be taken by an officer of the State he shall simply certify that it was acknowledged before him and when it was done, which shall be evidence that she has been examined separately and apart from her husband, and the contents explained to her, and that she had voluntarily acknowledged the instrument, and consented that it should be recorded.

Second. When the acknowledgment shall be taken by an officer re-

siding out of the State, the acknowledgment shall be to the following effect: (here is inserted the form of acknowledgment given above.)

Third. If the husband join in the deed with his wife, and acknowledge it before the same officer, his acknowledgment may be certified with that of his wife, immediately succeeding the word, "parties," thus: "which was acknowledged by the said C. D., to be his act and deed." (Id., § 21.)

Deeds executed in the State of Kentucky are admitted to record upon acknowledgment before the proper clerk, or upon proof by two subscribing witnesses, or of one witness who proves the attestation of the other, and also on the certificate of a county clerk that the deed has been acknowledged or proved before him. (Gen. Stats. of Kentucky, chap. 24, § 15.)

Deeds executed out of the State of Kentucky, and within the United States, in order to be recorded, must be acknowledged before a clerk of a court or his deputy, a notary public, the mayor of a city, a secretary of state, a commissioner to take acknowledgments, or a judge under the seal of his court. (Id., § 16.)

Deeds executed out of the United States must be acknowledged, in order to be recorded, before a foreign minister, consul, secretary of legation of the United States, or a secre-

tary of foreign affairs under his seal of office, or a judge of a Superior Court of the nation where the deed is executed. (Id., § 17.)

If a deed is proved by persons other than subscribing witnesses, the officer shall state their names and residences in his certificate. (Id., § 18.)

A non-resident married woman may convey an interest in real or personal property in that State by an agent acting under a power of attorney. This power of attorney must be executed and acknowledged as deeds of married women are required to be. (Id., § 36.)

No. 45.

Certificate of acknowledgment within the State of Kentucky, by husband and wife, of conveyance of property situated in that State.

(Gen. Stats. of Kentucky, chap. 24, § 15, subd. 1.)

As in form No. 43, to (*), and from thence as follows: which was acknowledged by the said C. D. and E. F. to be their act and deed.

Given, etc. (as in form No. 44).¹

A. B.

1. The above would also be the general form of acknowledgment by a grantor or grantors, within or with-

out the State of Kentucky. See, also, note to form No. 44.

No. 46.

Certificate of acknowledgment of conveyance of real estate situated in Louisiana.

STATE OF —, }
County of — } ss.:

I, A. B., a commissioner, duly commissioned and qualified by the executive authority and under the laws of the State of Louisiana, to take the acknowledgment of deeds and other instruments in writing to be used and recorded therein, do hereby certify that on the — day of —, A. D., 1—, before me personally appeared at —, in said county, C. D., to me known to be the individual named in, and who executed the above (or, annexed) conveyance (or, instrument), and acknowledged to me that he did sign, seal and deliver the same as his free act and deed, on the day and year therein

mentioned, and for the consideration, uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal, this — day of —, A. D., 1—, at, etc.¹

[OFFICIAL SEAL.]

A. B.
(Official title.)

1. Deeds made in other States of real estate situated in Louisiana, should be acknowledged before and attested by a commissioner for the State of Louisiana, resident in the State where taken, or should be proved according to local statute, and the capacity of the local officers must be proved according to the act of Congress, to admit it to record in Louisiana.

No. 47.

Certificate of acknowledgment of conveyance of real property situated in the State of Maine.

(Rev. Stats. of Maine, chap. 73, § 23.)

STATE OF (MAINE), }
County of —, } ss.:

Date —, 1—. Personally appeared the above-named (insert name of grantor), and acknowledged the foregoing instrument to be — free act and deed.¹

A. F.,
Justice of the Peace.

1. To entitle it to be recorded, the conveyance must be acknowledged by the grantors or one of them, or by their attorney, before a justice of the peace or notary public, or woman otherwise eligible under the Constitution, and appointed for the purpose by the governor, with the advice and consent of council, in the State of Maine; or out of that State and within any of the United States, before any justice of the peace, magistrate, commissioner appointed for the purpose by the governor of the State, or notary public; or in a foreign country, before a minister or consul of the United

States or notary public. (Rev. Stats. of Maine, chap. 73, § 17.)

A certificate of acknowledgment or proof of execution, as aforesaid, must be indorsed on or annexed to the deed, and then the deed and certificate may be recorded in the registry of deeds. No deed can be recorded without such certificate. (Id., § 23.)

When the grantor dies or departs from the State without acknowledging his deed, its execution may be proved before a court of record in the State, by a subscribing witness, and in case the subscribing witness

is dead or out of the State, by proof of the handwriting of the grantor and subscribing witness. (Id., §§ 18, 19.)

Should the grantor refuse to acknowledge the deed, a copy filed with the register of deeds has the same effect as recording for forty days, and its execution may be proved by the subscribing witness

before a justice of the peace or notary public in the State, notice of the hearing having been given to the grantor. Certificates so granted entitle the instrument to record. (Id., §§ 20-22.)

Powers of attorney to execute deeds should be acknowledged and recorded.

No. 48.

Certificate of acknowledgment taken within the State of Maryland.

(Public Gen. Laws of Maryland, art. 21, § 65.)

STATE OF (MARYLAND), *County of* —, to-wit.:

I hereby certify that on this — day of —, in the year —, before subscriber, a (here insert title of the officer taking the acknowledgment), personally appeared A. B. (here insert the name of the person making the acknowledgment), and acknowledged the foregoing deed to be his act.¹

J. K.

(Official title.)

1. The above form of acknowledgment is provided by section 65 of article 21 of the Public General Laws of Maryland, and declared thereby to be sufficient.

No estate of inheritance or freehold, or any declaration or limitation of use, or any estate above seven years shall pass or take effect, unless the deed conveying the same shall be executed, acknowledged and recorded as herein provided; and all such deeds shall be acknowledged before some one of the following officers:

First. If acknowledged in the county in which the real estate, or any part of it, lies: Before (1) some justice of the peace of said

county or city. (2) A judge of the Orphans' Court for said county or city. (3) The judge of the Circuit Court for the county. (4) The judge of the Superior Court, Court of Common Pleas, Baltimore City Court or Circuit Court of Baltimore city.

Second. If acknowledged within the State, but out of the county or city where the real estate, or any part of it, lies: Before (1) any justice of the peace for the county or city where the grantor may be; the official character of the justice being certified by the clerk of the Circuit or Superior Court, under his official seal. (2) Any judge of the Circuit Court for the circuit in which the grantor may be. (3) The judge of the Su-

perior Court, Court of Common Pleas, Baltimore City Court, or Circuit Court, if the grantor be in Baltimore city.

Third. If acknowledged without this State, but within the United States: Before (1) a notary public. (2) A judge of any court of the United States. (3) A judge of any court of any State or Territory having a seal. (4) A commissioner of deeds of the State of Maryland to take acknowledgment of deeds.

Fourth. If acknowledged without the United States: Before (1) any minister, consul-general, consul, deputy consul, consular agent or consular officer. (2) A notary public. (3) A commissioner of the State of Maryland to take acknowledgment of deeds.

Every officer before whom any acknowledgment shall be made shall give a certificate thereof, annexed to or indorsed upon said deed and to be recorded with it. To every certificate of acknowledgment, taken

without the State, before the judge of any court having a seal, the seal of such court shall be affixed. The certificate shall contain: (1) The name of the person making the acknowledgment. (2) The official style of the officer making the acknowledgment. (3) The time when taken. (4) A statement that the grantor acknowledged the deed to be his act, or made an acknowledgment to the like effect. (Id., art. 21, §§ 1-8.)

No separate acknowledgment by a married woman is necessary. (Id., art. 45, § 12.)

A deed of the interests or estates, above mentioned, must be recorded within six months from its date, in the county or city in which the land affected by such deed lies; and where it lies in more than one county, or in the city of Baltimore and a county, it shall be recorded in all the counties and the said city in which such land lies. (Id., § 13.)

See, also, notes to forms Nos. 49 and 50.

No. 49.

Certificate of acknowledgment by husband and wife, in the State of Maryland.

(Public Gen. Laws of Maryland, art. 21, § 66.)

STATE OF —, — *county*, to-wit:

I hereby certify, that on this — day of —, in the year —, before the subscriber a (here insert the official style of the person taking the acknowledgment), personally appeared (here insert the name of the husband) and (here insert the name of the married woman making the acknowledgment), his wife, and did each acknowledge the foregoing deed to be their respective act.¹

A. B.

(Official title.)

1. This form is prescribed by section 66 of article 21 of Public Gen-

eral Laws of Maryland. See, also, notes to forms Nos. 48 and 50.

No. 50.

Certificate of acknowledgment taken out of the State of Maryland.

(Public Gen. Laws of Maryland, art. 21, § 67.)

STATE OF —, — *county*, to-wit:

I hereby certify, that on this — day of —, in the year —, before the subscriber a (here insert the official title of the officer taking the acknowledgment), personally appeared (here insert the name of the person making the acknowledgment), and acknowledged the foregoing deed to be his act.

In testimony whereof, I have caused the seal of the court
 { SEAL OF THE } to be affixed (or, have affixed my official
 { COURT. } seal), this — day of —, A. D., —.¹
 A. B.

(Official title.)

1. See section 67, article 21, Gen. knowledge contained in the Public Laws of Maryland, by which foregoing forms shall be sufficient. the above form is prescribed, and it See, also, notes to forms Nos. 48 and 49. See, also, *Basshor v. Stewart* (54 Md. 383). is further provided by section 68 of the same article, that any form of ac-

No. 51.

Certificate of acknowledgment of deed conveying real estate situated in Massachusetts.

(Pub. Stats. of Massachusetts, chap. 120, § 6.)

COMMONWEALTH OF MASSACHUSETTS, } ss.:
Suffolk,

BOSTON, *January 1, 1—*.

Then the above-named (*) A. B. (and C. B., his wife), personally appeared and (severally) acknowledged the foregoing instrument by him (or, them) subscribed to be his (or, their) free act and deed.¹

Before me.

J. K.
 (Official title.)

1. No deed shall be recorded unless there is indorsed thereon, or annexed to it, a certificate of its acknowledgment, or proof of its due execution, made as hereafter provided, and such certificate shall be recorded at length with the deed to which it relates; but this section shall not apply to conveyances from the United States. (Pub. Stats. of Massachusetts, chap. 120, § 5.) The acknowledgment of a deed

shall be by the grantors, or one of them, or by the attorney executing the deed, and if made in this Commonwealth (of Massachusetts) shall be made before a justice of the peace, or notary public; if in any other portion of the United States, before a justice of the peace, notary public, magistrate or commissioner appointed for the purpose by the governor of the Commonwealth (of Massachusetts); and if in a foreign country, before such a justice, notary, magistrate or commissioner, or before a minister or consul of the United States, or a consular officer of the United States, accredited to such country; and the officer before whom an acknowledgment is made shall indorse a certificate of such acknowledgment upon the deed, or annex the same thereto. (Id., § 6.)

The provisions of law concerning the acknowledgment and recording of deeds shall apply to letters of attorney for the conveyance of real estate. (Id., § 14.)

If a deed is recorded without any certificate of acknowledgment or proof, the recording will be a mere nullity. (Pidge v. Tyler, 4 Mass. 541, 547; Blood v. Blood, 23 Pick. 80.)

A certificate of the appointment and authority of justices of the peace in other States, made by the secre-

tary of State or clerk of a court of record, should be annexed to acknowledgments taken by them.

By sections 7 to 13 of the statute above referred to, provisions are made for proof of deeds by a subscribing witness, if the grantor dies or leaves the State without acknowledging, or refuses to acknowledge his deed.

Dower may be barred in an estate conveyed by the husband, or by operation of law, by the wife joining in the deed conveying the same and therein releasing her right of dower or by releasing the same by a subsequent deed executed either separately or jointly with her husband. (Id., chap. 124, § 6.)

The same rule applies to a release of the wife's right of homestead. (Greenough v. Turner, 11 Gray, 332.)

An acknowledgment by the wife is unnecessary, when she joins with her husband in the deed and the deed is acknowledged by the husband. (Catlin v. Ware, 9 Mass. 218.)

Where a conveyance is made by the wife of her own property, the husband must join to release his tenancy by the curtesy. The wife's acknowledgment alone to such deed is sufficient. (Id. Stats., chap. 124, § 1.) (Shaw v. Poor, 6 Pick. 86; Palmer v. Paine, 9 Gray, 56.)

No. 52.

Certificate of acknowledgment, by officer of corporation, of deed of real property situated in Massachusetts.

(Pub. Stats. of Mass., chap. 120, § 6.)

As in last-above form to (*), and from thence as follows:
A. B. personally appeared and acknowledged the foregoing instrument to be the free act and deed of the (name of corporation) a corporation.!

Before me.

J. K.
(Official title.)

1. See note 1 to last form, No. 51.

No. 53.**Certificate of acknowledgment of deed conveying property in Massachusetts, by attorney of grantor.**

(Pub. Stats. of Mass., chap. 120, § 6.)

As in last-above form to (*), and from thence as follows:
 L. M., who signed and sealed the foregoing instrument as the attorney of the above-named A. B. (and C. D.), personally appeared and acknowledged the same to be the free act and deed of the said A. B. (and C. D.).

Before me.¹

J. K.

(Official title.)

1. See note 1 to form No. 51.

No. 54.**Certificate of acknowledgment of conveyance of real property situated in the State of Michigan.**

(Stats. of Michigan, §§ 5658, 5732.)

STATE OF (MICHIGAN), }
County of—, } ss.:

On this — day of —, in the year —, before me, the subscriber, A. B., a (name of officer), in and for said county, personally appeared (names of parties), to me known to be the persons described in and who executed the within instrument, who acknowledged the same to be their free act and deed.¹

(Signature and official title.)

(Or, State, etc., as above.) Before me, A. B., a (giving official title), this — day of —, 1—, E. F. acknowledged the execution of the annexed deed (or, mortgage).²

(Signature, etc., as above.)

1. Deeds executed within the State of Michigan, of lands, or any interest in lands therein, must be executed in the presence of two witnesses, who must subscribe their names thereto as such, and the persons executing such deeds may acknowledge the execution thereof before any judge or commissioner of a court of record, or before any notary public, justice of the peace, or master in chancery, within the State, and the officer taking such acknowledgment shall indorse thereon a certi-

cate of the acknowledgment thereof, and the true date of making the same, under his hand. (Howell's Ann. Stats. of Michigan, § 5658, chap. 216, tit. 22, § 8.)

If any such deed shall be executed in any other State, Territory or district of the United States, such deed may be executed according to the laws of such State, Territory or district, and the execution thereof may be acknowledged before any judge of a court of record, notary public, justice of the peace, master in chancery, or other officer authorized by the laws of such State, Territory or district, to take the acknowledgment of deeds therein, or before any commissioner appointed by the governor of the State of Michigan for such purpose. (Id., § 5659.)

In the cases provided for in the last preceding section, unless the acknowledgment be taken before a commissioner appointed by the governor of the State of Michigan for that purpose, such deed shall have attached thereto a certificate of the clerk or other proper certifying officer of a court of record, of the county or district, or of the secretary of state of the State or Territory within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is therein represented to be, and that he believes the signature of such person to such certificate of acknowledgment to be genuine, and that the deed is executed and acknowledged according to the laws of such State, Territory or district. (Id., § 5660.)

If such deed be executed in any foreign country, it may be executed according to the laws of such coun-

try, and the execution thereof may be acknowledged before any notary public therein, or before any minister, plenipotentiary, minister extraordinary, minister resident, charge des affaires, commissioner or consul of the United States appointed to reside therein; which acknowledgment shall be certified thereon by the officer taking the same under his hand, and if taken before a notary public, his seal of office shall be affixed to such certificate. (Id., § 5661.)

The acknowledgment by any married woman to a deed of conveyance or other instrument affecting real property, may be taken in the same manner as if she were *sole*. (Id., § 5662.)

When any married woman, not residing in the State, shall join with her husband in any conveyance of real estate situated within the State, the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution of such conveyance by her, may be the same as if she were sole. (Id., § 5663.)

A seal may be made by a scroll (id., § 5699), but the deed would not be invalidated by the absence of a seal. (Id., § 7778.)

The acknowledgment of any married woman to a deed of conveyance or other instrument affecting real property may be taken in the same manner as if she were sole. (Id., § 5662.)

2. The following, or any other form substantially the same, shall be a good and sufficient form of acknowledgment of any deed or mortgage:

Before me, E. F. (a judge, justice of the peace, commissioner or notary public, as the case may be), this — day of —, 1—, A. B. acknowl-

edged the execution of the annexed deed (or, mortgage, as the case may be): Provided, that the signing, sealing and delivering of every such conveyance and mortgage shall be witnessed by two persons, who shall subscribe their names thereto. (Id., § 5732.)

No. 55.

Certificate of acknowledgment, by natural person acting in his own right, of conveyance of real estate situated in Minnesota.

(Gen. Stats. of Minnesota, § 4121.)

STATE OF (MINNESOTA), }
County of —, } ss.:

On this — day of —, 1—, before me, personally appeared A. B. (and C. D.), to me known to be the person (or, persons) described in, and who executed the foregoing instrument, and acknowledged that he (or, they) executed the same as his (or, their) free act and deed.¹

F. P.

(Official title.)

1. Deeds of land, or any interest in lands within the State of Minnesota, shall be executed in the presence of two witnesses who shall subscribe their names to the same as such, and may be acknowledged by the person or persons executing the same before any of the following officers:

First. If acknowledged within the State, any officer authorized by the laws of the State to take acknowledgments therein. (See below as to these officers.)

Second. If acknowledged out of the State and within the United States, the chief justice and associate justices of the Supreme Court of the United States, judges of the District Court of the United States, the judges or justices of the Supreme, Superior, Circuit or other court of record of any State, Territory or district within the United States; the

clerks of the several courts above mentioned, and notaries public, justices of the peace, and commissioners appointed by the governor of the State of Minnesota for such purpose; but no acknowledgment taken by any such officer shall be valid unless taken within some place or territory for which he shall have been elected or appointed to such office, or to which the jurisdiction of the court to which he belongs shall extend. (Stats. of Minnesota, 1891, § 4121.)

Any officer taking the acknowledgment of a deed, as provided in the preceding section, shall indorse upon or append to such deed a certificate of such acknowledgment, and shall date and sign such certificate. (Id., § 4122.)

In the cases provided for in the second subdivision of section 4121, above cited, unless the acknowledg-

ment is taken before a commissioner appointed by the governor of the State of Minnesota for that purpose, or before a notary public, or before a clerk of a court or some other officer having a seal of office, and the certificate of acknowledgment upon such deed with the seal of office of such office affixed thereto, there shall also be attached or appended to or indorsed upon such deed a certificate of the clerk or other proper certifying officer of a court of record of the county within which such acknowledgment was taken, under the seal of his office that the person whose name is subscribed to the certificate of acknowledgment, was, at the date thereof, such officer as he is therein represented to be, that he is acquainted with the handwriting of such person, and that he verily believes the signature subscribed to the certificate of acknowledgment to be genuine: Provided, that the certificate of the secretary of any State or Territory, or his deputy under the seal of such State or Territory attached or appended to or indorsed upon such deed to the effect that any justice of the peace before whom the acknowledgment purports to have been taken, held at the date of such acknowledgment his office by appointment of the governor of such State or Territory shall be a sufficient authentication. All acknowledgments heretofore taken and authenticated as herein provided shall be deemed valid and sufficiently authenticated. (Id., § 4123.)

If such deed is executed in any foreign country it may be executed according to the laws of such country and acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge

d'affaires, commissioner or consul of the United States appointed to reside therein; which acknowledgment shall be certified thereon by the officer taking the same, under his hand; and if taken before a notary public, his seal of office shall be affixed to such certificate; provided that any such deed duly signed and sealed, with two witnesses, and acknowledged as aforesaid, shall be deemed good and sufficient, whether in accordance with the laws of such foreign country or not; and provided, further, that any deed of land in the State of Minnesota, executed and acknowledged in any foreign country, which shall have indorsed thereon or attached thereto a certificate of any minister resident, charge d'affaires or consul of the United States, appointed to reside therein, that such deed is executed and acknowledged according to the laws of such country, shall be entitled to record in the county in which such land is situated. (Id., § 4124.)

Within the State of Minnesota judges of the Supreme and District Courts and courts of probate, the clerks of said courts, notaries public, justices of the peace, registers of deeds, court commissioners and county auditors are authorized to take the acknowledgments of deeds and other instruments in writing within their several jurisdictions; and whenever any officer having or using a seal of office takes an acknowledgment, he shall affix his seal to the instrument so acknowledged. (Id., § 4285.)

Township clerks (within that State) are authorized and empowered to take acknowledgments of chattel mortgages. (Id., § 4287.)

Town clerks of the several towns, city clerks of all cities, and recorders

of all villages in the State of Minnesota, are authorized to administer all oaths and take all acknowledgments of instruments authorized or required by law. (Id., § 4881.)

The above form and the three following forms of acknowledgment are prescribed by section 4292 of the statutes above referred to, to be used in the case of conveyances or other written instruments affecting real estate; and it is declared by that section that any acknowledgment so taken and certified, shall be sufficient

to satisfy all requirements of law relating to the execution or recording of such instruments.

If the wife unites with her husband in execution of the instrument, she shall be described in the acknowledgment as his wife, but in all other respects her acknowledgment shall be taken and certified as if she were *sole*, and no separate examination of a married woman to the execution of any release of dower or other instrument affecting real estate shall be required. (Id., § 4293.)

No. 56.

Same certificate of acknowledgment by natural person acting by attorney.

(Gen. Stats. of Minnesota, §§ 4122, 4292.)

STATE OF (MINNESOTA), } ss.:
County of —,

On this — day of —, 1—, before me, personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same as the free act and deed of said C. D.¹

F. P.
(Official title.)

1. See note 1 to form No. 55.

No. 57.

Same certificate of acknowledgment, in the case of a corporation or joint-stock association.

(Gen. Stats. of Minnesota, §§ 4122, 4292.)

STATE OF (MINNESOTA), } ss.:
County of —,

On this — day of —, 1—, before me, appeared A. B., to me personally known, who being by me duly sworn (or, affirmed), did say that he is the president (or, name other

officer or agent of the corporation or association) of (describing the corporation or association), and that the seal affixed to said instrument is the corporate seal of said corporation (or, association), and that said instrument was signed and sealed in behalf of said corporation (or, association), by authority of its board of directors (or, trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or, association).¹

F. P.

(Official title.)

1. See note to form No. 55. If said corporation or association has no corporate seal omit the words "the seal affixed to said instrument is the corporate seal of said corporation (or, association), and that," and add at the end of the affidavit clause the words "and that said corporation (or, association) has no corporate seal." (Gen. Stats. of Minnesota, § 4292.)

No. 58.

Certificate of acknowledgment of conveyance of real property situated in the State of Mississippi.

(Rev. Code of Mississippi, 1880, § 1217.)

STATE OF (MISSISSIPPI), } ss.:
County of ———,

Personally appeared before me, A. B., a (state what office), the within-named C. D., who acknowledged that he signed and delivered the foregoing instrument of writing on the day and date, and for the uses and purposes therein mentioned.

Given under my hand, this — day of —, 1——.¹

A. B.

(Official title.)

1. Every conveyance, contract or agreement, necessary to be recorded, may be acknowledged or proved (within the State of Mississippi) before any of the following officers, to-wit: Any judge of the Supreme Court, or any judge of the Circuit Court, any chancellor, any clerk of a court of record, who shall certify such acknowledgment or proof under his seal of office, or any justice of the peace, or member of the county board of supervisors, whether the lands conveyed lie within his county or not. (Revised Code of Mississippi, 1880, § 1217.) See note to form 829.

The acknowledgment of a deed shall be in the form or to the effect fol-

lowing, to-wit: (here follows a form substantially like the foregoing, the words "and for the uses and purposes" not being contained in the statutory form). (Id., § 1218.)

If the party who shall execute any conveyance for lands, tenements or hereditaments, lying and being in the State (of Mississippi), or if the witnesses thereto reside or be not in that State, but in some other State or Territory of the Union, then the acknowledgment or proof may be made before and certified to by the chief justice of the United States, or an associate justice of the Supreme Court of the United States, or a district judge of the United States, or any judge or justice of the Supreme or Superior Court of any State or Territory of the Union, or any justice of the peace, whose official character shall be certified under the seal of some court of record in his county, or before any commissioner residing in such State or Territory, who may be appointed by the governor of the State of Mississippi to take acknowledgments and proofs of conveyances, or a notary public, or a clerk of a court of record having a seal of office in said State or Territory, and shall be as good and effectual as if such certificate of acknowledgment or proof had been made by a competent officer in the State of Mississippi. (Id., § 1219.)

If such party or witnesses reside or be in a foreign kingdom, State, nation or colony, then the acknowledgment or proof of the execution of such conveyance may be made before any court of record, or the mayor or chief magistrate of any city, borough

or corporation, of such foreign kingdom, State, nation or colony, in which the party or witnesses may be; or before any ambassador, foreign minister, secretary of legation, or consul of the United States, to the kingdom, State, nation or colony, in which the party may reside or be, and the certificate, in such cases, shall also be required to show the identity of the party, and that he acknowledged the execution of the instrument, or that the execution was duly proved; or if made before an ambassador, minister, secretary or consul, then, as such acts are usually certified by such ambassador, minister, secretary or consul, and shall be as good and effectual as if made and certified by a competent officer of the State of Mississippi. (Id., § 1220.)

If the grantor and witnesses of any instrument be dead or absent, so that his or her personal attendance cannot be had, it may be established by the oath of any person, who, on an examination before an officer competent to take acknowledgments, can establish the handwriting of the deceased or absent witnesses; or when such proof cannot be had, then the handwriting of the grantor may be proved, and the officer before whom such proof is made shall certify accordingly, and such certificate shall be deemed equivalent to the acknowledgment by the grantor, or proof by subscribing witnesses, and entitle the instrument to be recorded. (Id., § 1221.)

A married woman may convey land as if she were unmarried. (Id., § 1193.)

No. 59.**Proof of execution of conveyance of real estate situated in State of Mississippi by subscribing witness.**

(Rev. Code of Mississippi, § 1218.)

As in last form to the end of description of office, and from thence, as follows: The within C. D., one of the subscribing witnesses to the foregoing instrument, who, being first duly sworn, deposeth and saith that he saw the within (or, above) named A. B., whose name is subscribed thereto, sign and deliver the same to the said C. D. [or, that he heard the said A. B. acknowledge that he signed and delivered the same to the said C. D.], that he, this deponent, subscribed his name, as a witness thereto, in the presence of the said A. B. (and that he saw the other subscribing witness (or, witnesses, naming them) sign the same in the presence of the said A. B., and that the witnesses signed in the presence of each other, on the day and year therein named.

Given under my hand, etc.)¹

A. B.

(Official title.)

1. See note 1 to form No. 58. The etc., are omitted in the Code of words in parenthesis "and that," 1892.

No. 60.**Certificate of acknowledgment of conveyance of real property situated in State of Missouri, by natural persons acting in their own right.**

(Rev. Stats. of Missouri, 1889, § 2408.)

STATE OF (MISSOURI), }
County of —, } ss.:

On this — day of —, 1—, before me personally appeared A. B. (or, A. B. and C. D.), to me known to be the person (or, persons) described in and who executed the foregoing instrument and acknowledged that he (or, they) executed the same as his (or, their) free act and deed.¹

E. F.

(Official title.)

1. All deeds or other conveyances therein, shall be subscribed and of lands, or of any estate or interest sealed by the party granting the

same, or by his lawful agent, and shall be acknowledged or proved and certified in the manner herein prescribed. (Rev. Stats. of Missouri 1889, § 2401.)

The proof or acknowledgment of every conveyance or instrument in writing affecting real estate in law or equity, including deeds of married women, shall be taken by some one of the following courts or officers:

First. If acknowledged or proved within the State of Missouri, by some court having a seal, or some judge, or justice, or clerk thereof, notary public, or some justice of the peace of the county in which the real estate conveyed or affected is situated.

Second. If acknowledged or proved without the State of Missouri and within the United States, by any notary public, or by any court of the United States, or of any State or Territory, having a seal, or the clerk of any such court, or any commissioner appointed by the governor of the State of Missouri to take the acknowledgment of deeds.

Third. If acknowledged or proved without the United States, by any court of any State, kingdom, or empire, having a seal, or the mayor or chief officer of any city or town having an official seal, or by any minister or consular officer of the United States, or notary public having a seal. (Id., § 2403.)

Every court or officer taking the proof or acknowledgment of any conveyance or instrument of writing affecting real estate, or the relinquishment of the dower of a married woman, shall grant a certificate thereof, and cause the same to be indorsed upon such conveyance or instrument of writing. (Id., § 2405.)

Such certificate shall be: First,

when granted by a court under the seal of the court; second, when granted by the clerk of the court, under the hand of the clerk and seal of the court of which he is clerk; third, when granted by an officer who has a seal of office, under the hand and official seal of such officer; fourth, when granted by an officer who has no seal of office, under the hand of such officer. (Id., § 2406.)

No acknowledgment of any instrument in writing conveying real estate, or whereby real estate may be affected, shall be taken, unless the person offering to make such acknowledgment shall be previously known to at least one judge of the court, or to the officer taking the same, to be the person whose name is subscribed to such instrument as a party thereto, or shall be proved to be such by at least two credible witnesses. (Id., § 2407.)

The certificate of acknowledgment shall state the act of acknowledgment, and that the person making the same was personally known to at least one judge of the court, or to the officer granting the certificate, to be the person whose name is subscribed to the instrument as a party thereto, or was proved to be such by at least two witnesses, whose names and places of residence shall be inserted in the certificate, and the following forms of acknowledgment may be used in the case of conveyances or other written instruments affecting real estate; and any acknowledgment so taken and certified shall be sufficient to satisfy all requirements of law, relating to the execution or recording of such instruments. (Here follow forms of acknowledgment in substance as in forms Nos. 60, 61, 62.) (Id., § 2408.)

No. 61.

Certificate of acknowledgment of conveyance of real estate situated in State of Missouri, by natural persons acting by attorney.

(Rev. Stats. of Missouri, 1889, § 2408.)

STATE OF (MISSOURI), }
County of —, } ss.:

On this — day of —, 1—, before me, personally appeared A. B., to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged the same as the free act and deed of said C. D.¹

1. See note 1 to form No. 60.

No. 62.

Certificate of acknowledgment of conveyance of real estate situated in State of Missouri, by corporation or joint-stock association.

(Rev. Stats. of Missouri, 1889, § 2408.)

STATE OF (MISSOURI), }
County of —, } ss.:

On this — day of —, 1—, before me, appeared A. B., to me personally known, who being by me duly sworn (or, affirmed), did say that he is the president (or, name other officer or agent of the corporation or association) of (describing the association or corporation), and that the seal affixed to said instrument is the corporate seal of said corporation (or, association), and that said instrument was signed and sealed in behalf of said corporation (or, association), by authority of its board of directors (or, trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or, association).¹

E. F.
(Official title.)

1. See note 1 to form No. 60.

No. 63.

Certificate of acknowledgment of conveyance of real estate situated in Montana, by grantor known to officer.

(Stats. of Montana, Gen. Laws 1887, chap. 20, § 243.)

STATE OF (MONTANA), }
County of ———, } ss.:

On this — day of —, 1—, personally appeared before me, a notary public (judge, or other officer, as the case may be) in and for said county, A. B., personally known to me to be the person described in and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.¹

(Signature and title of officer.)

1. Conveyance of land, or of any estate or interest therein, may be made by deed, signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney duly acknowledged. (Compiled Stats. of Montana, 1887, Gen. Laws, chap. 20, § 235.)

The proof or acknowledgment of every conveyance affecting real estate shall be taken by some one of the following officers:

First. If acknowledged or proved within the (Territory) by some judge or clerk of a court having a seal, or by some notary public or some justice of the peace, within the (Territory), and the certificate of such acknowledgment or proof shall be under the hand of such judge or clerk, and the seal of such court, or under the hand of such justice of the peace; and if the property affected by such conveyance is not in the county for which the justice taking the acknowledgment is an officer, the official

character of such justice shall be certified to under the hand and seal of the county clerk of the county within and for which such justice may be elected or acting.

Second. If acknowledged or proved without the (Territory) and within the United States, by some judge or clerk of any court of the United States, or of any State or Territory having a seal, or by a notary public, or a justice of the peace, or by any commissioner appointed by the governor of the (Territory) of Montana for that purpose, and the certificate of such acknowledgment or proof shall be under the hand of such judge or clerk, and the seal of such court, or under the hand of such notary public or commissioner and his official seal, or under the hand of such justice of the peace; and in all cases the official character of such justice shall be certified to under the seal of the court, tribunal or officer within and for the county in which such justice of the peace

may be acting, which has cognizance of the official character of such justice. (Id., § 238.)

Third. The proof or acknowledgment of every power of attorney or conveyance affecting real estate within the (Territory) of Montana, made and executed without the jurisdiction of the United States, shall be taken by one of the following officers, to-wit: A notary public or United States consul of any State, province, republic, kingdom or empire; and when so taken and acknowledged before either of said officers and by them certified under their seal of office, shall be entitled to be recorded in any county in which any real estate may be situated, affected by such power of attorney or conveyance. Such certificate shall be substantially in the following form, viz.: (here follows the form above given). (Id., § 239.)

Every officer who shall take the proof or acknowledgment of any conveyance affecting any real estate shall grant a certificate thereof, and cause the same to be indorsed or annexed to such conveyance. Such certificate shall be, when granted by any such judge or clerk, under the hand of such judge or clerk and the seal of the court; when granted by any officer who has a seal of office, under the hand and official seal of such officer. (Id., § 240.)

Such certificate shall be substantially in the following form, to-wit: (giving form as in next form, No. 64.)

When the grantor is unknown to the judge or other officer taking the acknowledgment, the certificate may

be in the following form, to-wit: (giving form as in No. 65.) (Id., § 244.)

Any officer authorized by this chapter to take the proof or acknowledgment of any conveyance, whereby any real estate is conveyed or may be affected, may take and certify the acknowledgment of any married woman to such conveyance of real estate. (Id., § 255.)

By section 248, id., it is provided that the certificate of proof of the execution of a deed by a subscribing witness shall set forth the following matters:

First. That such subscribing witness was known to the officer granting the certificate to be the person whose name is subscribed to such conveyance as a witness thereto, or was proved to be such by oath or affirmation of a witness whose name shall be inserted in the certificate.

Second. The proof given by such witness of the execution of such conveyance, and of the fact that the person whose name is subscribed to such conveyance as a party thereto, is the person who executed the same, and that such witness subscribed his name to such conveyance as a witness thereof.

The judges of the Supreme Court, of the District Courts, and of the Probate Courts, shall have power in any part of the (Territory), and justices of the peace within their respective counties shall have power to take and certify the proof and acknowledgment of a conveyance of real property, or any instrument required to be proved or acknowledged. (Id., chap. 7, § 524.)

No. 64.

Certificate of acknowledgment of conveyance of real property in Montana, by grantor unknown to officer.

(Compiled Stats. of Montana, Gen. Laws 1887, chap. 20, § 239.)

STATE OF (MONTANA), } ss.:
County of —, }

On this — day of —, A. D., 1—, personally appeared before me, a notary public (judge, or other officer), in and for said county, A. B., satisfactorily proved to me to be the person described in and who executed the within conveyance, by the oath of C. D., a competent and credible witness, for that purpose by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.¹

(Signature and title of officer.)

1. See note 1 to form No. 63, as to this certificate.

No. 65.

Certificate of proof, by subscribing witness, of execution of conveyance of real property situated in Montana.

(Stats. of Montana, Gen. Laws 1887, chap. 20, § 248.)

STATE OF (MONTANA), } ss.:
County of —, }

On this — day of —, A. D., 1—, personally appeared before me, a notary public (or, consul of the United States, as the case may be), in and for —, A. B., personally known to me (or, proved to me by the oath (or, affirmation) of C. D.) to be the person whose name is subscribed to the foregoing conveyance as a witness thereto, and who being by me duly sworn, did depose and say: That he was present and saw C. G., whom he knew to be the person described in and who executed said conveyance, execute the same, and that said C. G. acknowledged to him that he

executed the same freely and voluntarily, and for the uses and purposes therein mentioned, and that he thereupon subscribed his name to such conveyance as a subscribing witness thereto.¹

(Signature and title of officer.)

1. See section 248 of chap. 20 (Gen. Laws) of Statutes of Montana, 1887, referred to in note to form No. 63.

No. 66.

Certificate of acknowledgment, by husband and wife, of conveyance of real estate situated in Nebraska.

(Stats. of Nebraska, chap. 73, § 1.)

STATE OF (NEBRASKA), }
County of —, } ss..

On this — day of —, 1—, before me (name officer), a (here insert title), within and for said county, personally came Samuel Jones and Sarah Jones, his wife, personally known to me to be the identical persons whose names are affixed to the above instrument as grantors, and severally acknowledged the execution of the same to be their voluntary act and deed for the purpose therein expressed.

In witness whereof, I have hereunto subscribed my name and affixed my official seal (if officer have seal) at — in said county, the day and year last aforesaid.¹

[SEAL.]

(Signature and title.)

1. Deeds of real estate or any interest therein in the State of Nebraska, except leases for one year or for a less time, if executed in that State, must be signed by the grantor or grantors, being of lawful age, in the presence of at least one competent witness, who shall subscribe his or her name as a witness thereto, and be acknowledged or proved and recorded as directed by this chapter. (Compiled Stats. of Nebraska, chap. 73, § 1.)

The grantor must acknowledge the instrument to be his voluntary act and deed. (Id., § 2.)

The acknowledgment must be made or proved if in that State, before any judge or clerk of any court, or some justice of the peace or notary public therein; but no officer can take any such acknowledgment or proof out of his territorial jurisdiction. (Id., § 3.)

If executed and acknowledged or proved in any other State, Territory

or district of the United States, it must be executed and acknowledged or proved, either according to the laws of such State, Territory, or district, or in accordance with the laws of the State of Nebraska, and such acknowledgment shall be made before and certified by any officer authorized by the laws of such State, Territory, or district, to take and certify acknowledgments, or by a commissioner of deeds appointed by the governor of the State of Nebraska for that purpose. (Id., § 4.)

In all cases provided for in section 4 of this chapter (if such acknowledgment or proof is taken before a commissioner appointed by the governor of the State of Nebraska for that purpose, notary public, or other officer using an official seal), the instrument thus acknowledged or proved shall be entitled to be recorded without further authentication: Provided, that, in all other cases, the deed or other instrument shall have attached thereto a certificate of the clerk of a court of record, or other proper certifying officer of the county, district or State within which the acknowledgment or proof was taken, under the seal of his office, showing the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is therein represented to be; that he is well acquainted with the handwriting of such officer; that he believes the said signature of such officer to be genuine, and that the deed or other instrument is executed and acknowledged according to the laws of such State, district or Territory. (Id., § 5.)

If such deed be executed in a

foreign country, it may be executed according to the laws of such country, and the execution thereof may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner, commercial agent, or consul of the United States, appointed to reside therein, which acknowledgment shall be certified thereon by the officer taking the same, under his hand, and if taken before a notary public, his seal of office shall be affixed to his certificate. (Id., § 6.)

All county clerks and their deputies within the State of Nebraska, shall have authority to administer oaths and affirmations in all cases where oaths or affirmations are required, and to take acknowledgments of deeds, mortgages, and all other instruments in writing, and shall attest the same with the county seal. (Id., chap. 18, § 90A.)

Deputy clerks of the District and County Courts in the State of Nebraska are hereby authorized to take acknowledgments of deeds and other instruments in writing in the names of the principals, and the same shall be as legal and valid as if taken by their principals. (Id., chap. 24, § 7.)

The secretary of state of that State shall have power to take acknowledgments or proof of the execution of deeds, mortgages, powers of attorney, and other instruments in writing to be used or recorded in that State. (Id., chap. 83, art. 2, § 7.)

Registers of deeds are authorized by section 77, chapter 18, id., to take acknowledgments of deeds.

No. 67.

Certificate of acknowledgment of conveyance of real property situated in Nevada, by grantor known to officer.

(Gen. Stats. of Nevada, § 2577.)

STATE OF (NEVADA), }
County of —, } ss.:

(Or, state any other place where acknowledged.)

On this — day of —, A. D., 1—, personally appeared before me, a notary public (or, judge or officer, as the case may be), in and for said county (*), A. B., known to me to be the person described in, and who executed the foregoing instrument, who acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, etc.¹

[SEAL.]

(Signature and title.)

1. Every conveyance in writing, United States, by some judge or whereby any real estate is conveyed, clerk of any court of the United States, or of any State or Territory having a seal, or by any commissioner appointed by the government of the said State for that purpose, or by a justice of the peace of any county in any State or Territory, accompanied with the certificate of the clerk of a court of record of the county having a seal, as to the official character of the justice, and the authenticity of his signature.

The proof or acknowledgment of every conveyance affecting any real estate shall be taken by some one of the following officers:

First. If acknowledged or proved within the State of Nevada, by some judge or clerk of a court having a seal, or some notary public or justice of the peace; provided, when the acknowledgment is taken before a justice of the peace, in any other county than that in which the real estate is situated, the same shall be accompanied with the certificate of the clerk of the District Court of such county, as to the official character of the justice taking the proof or acknowledgment, and the authenticity of his signature.

Second. If acknowledged or proved without the said State, but within the

Third. If acknowledged or proved without the United States, by some judge or clerk of any court of any State, kingdom or empire having a seal, or by any notary public therein, or by any minister, commissioner or consul of the United States, appointed to reside therein. (Id., § 2572.)

The officer taking the proof or acknowledgment of any conveyance affecting any real estate shall grant a certificate thereof, and cause such certificate to be indorsed or annexed to such conveyance; such certificate

shall be: First. When granted by any judge or clerk, under the hand of such judge or clerk, and the seal of the court. Second. When granted by an officer who has a seal of office, under the hand and official seal of such officer. (Id., § 2574.)

Such certificate shall be substantially in the following form, to-wit: (here is given certificate, as in form No. 67). (Id., § 2577.)

When the grantor is unknown to the court or officer the certificate shall be as follows: (here is given certificate as in form No. 68.) (Id., § 2578.)

The county recorder of the several counties within the State of Nevada

are empowered to take and certify the acknowledgment and proof of all conveyances affecting any real estate, or of any other written instrument. (Id., § 2191.)

The certificate of such acknowledgment shall state the fact of acknowledgment, and that the person making the same was personally known to the officer granting the certificate to be the person whose name is subscribed to the conveyance as a party thereto, or was proved to be such by the oath or affirmation of a credible witness, whose name shall be inserted in the certificate. (Id., § 2576.) See, also, *Johnson v. Badger M. & M. Co.* (13 Nev. 351).

No. 68.

Certificate of acknowledgment of conveyance of real property situated in Nevada, by grantor unknown to officer.

(Gen. Stats. of Nevada, § 2578.)

As in form No. 67, to (*), and from thence as follows: satisfactorily proved to me to be the person described in, and who executed the within conveyance, by the oath of C. D., a competent and credible witness, for that purpose by me duly sworn, and he, the said A. B., acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

In witness whereof, etc.¹

[SEAL]

E. F.

(Official title.)

1. See note to form No. 67.

No. 69.

Certificate of acknowledgment, by husband and wife, of conveyance of real property situated in Nevada.

(Gen. Stats. of Nevada, § 2591.)

STATE OF (NEVADA), }
County of —, } ss.:

On this — day of —, A. D., 1—, before me, John Doe, a notary public in and for said county and State, per-

sonally appeared A. B., (*) and C. B., his wife, whose names are subscribed to the annexed instrument, as parties thereto, personally known to me to be the individuals described therein, and who executed the same, and they, and each of them, acknowledged to me that they executed the said instrument each, respectively, freely and voluntarily, and for the uses and purposes therein mentioned. And I further certify that the said C. B., wife of the said A. B., is personally known to me (or, proved to me by A. M., a credible witness) to be the person whose name is subscribed to said conveyance as a party thereto, and that she was by me made acquainted with the contents thereof, and thereupon acknowledged to me, on an examination apart from and without the hearing of her husband, that she executed the same freely and voluntarily, without fear or compulsion or undue influence of her said husband, and that she does not wish to retract the execution of the same.

In witness whereof, etc.¹

[SEAL]

E. F.
(Official title.)

1. See section 2591 of General Statutes of Nevada, as to this certificate. Also, see note 1 to form No. 67.

No. 70.

Certificate of acknowledgment of conveyance of real estate situated in New Hampshire.

(Gen. Laws of New Hampshire, tit. 16, chap. 135, § 3.)

STATE OF (NEW HAMPSHIRE), } ss.:
County of —

Day —, month —, year —.

Personally appeared the above-named A. B., and acknowledged the foregoing instrument by him signed, to be his free act and deed.

Before me.¹

(Signature and title.)

1. Every deed or other conveyance of real estate must be signed and sealed by the party granting the same, attested by two or more witnesses, acknowledged by the grantor before a justice, notary public or commissioner, or before a minister or consul of the United States in

a foreign country, and recorded at length in the registry of deeds in the county where such lands lie. (Gen. Laws of New Hampshire, 1878, p. 323, § 3, tit. 16, chap. 135.)

Every power of attorney to convey real estate must be signed, sealed, attested and acknowledged, and may be recorded as required for a deed, and a copy of the record may be used in evidence, whenever a copy of the deed so made is admissible. (Id., p. 324, § 6.)

Any deed not acknowledged by

the grantor, but in other respects duly executed, may be recorded, and for sixty days after such recording shall be as effectual as if duly acknowledged. (Id., § 7.)

If an acknowledgment is taken by a justice out of the State, a certificate of a clerk of a court of record should be attached to the deed, to the effect that he is a justice.

No separate acknowledgment is required to be made by a wife of her execution of a deed.

No. 71.

Certificate of acknowledgment of conveyance of real estate situated in New Jersey, by person not known to the officer.

(Rev. Stats. of New Jersey, 1877, pp. 152, etc.)

STATE OF (NEW JERSEY), { ss.:
County of —, }

I, A. B., a (commissioner for the State of New Jersey, residing in the county of —, in the State of —, or, give other description of officer), do certify that on the — day of —, in the year one thousand — hundred and —, in the county of —, aforesaid, personally appeared before me, C. D., and acknowledged to me that he had signed, sealed and delivered the foregoing (or, within) deed (or, instrument) as his voluntary act and deed, and at the same time, also appeared before me, E. F., who, being by me duly sworn, did depose and say that he resided in the town (or, city) of —, in the county of —, and State of —, and that he was acquainted with said C. D., the person then present, and so making the said acknowledgment, and knew him to be the individual described in, and who executed the said deed (or, instrument), which is to me satisfactory evidence of these facts, said E. F. being to me known.

In witness whereof, I have hereunto set my hand and official seal, at —, in the county and State aforesaid, on the — day of —, one thousand — hundred and —.¹

[SEAL.]

A. B.,

(Commissioner for the State of New Jersey.)

1. Conveyances of real property situated in New Jersey must be acknowledged by the person executing the same, or proved by a subscribing witness. The person making the acknowledgment must be personally known to the officer, or his identity proved by a witness known to the officer, or if proved by a subscribing witness, the latter must be personally known to the officer, or his identity proved by a witness, whose name and place of residence must be stated in the certificate. (Revision of N. J. Stats., 1877, pp. 152, etc.)

If taken within the State, the acknowledgment or proof must be made before the chancellor of the State, a commissioner of deeds, a justice of the Supreme Court of the State, a master in chancery, or a judge of the Court of Common Pleas of the State. (Id.)

If taken out of the State, it may be taken by the chief justice of the United States, or an associate justice of the Supreme Court of the United States, or a circuit or district judge of the same, or any judge or justice of the Supreme or Superior Court, or the chancellor of any State in the Union, or Territory thereof, or in the District of Columbia, or before any foreign commissioner of deeds for New Jersey, or master in chancery of that State, or before any mayor or other chief magistrate of any city in such State, district, or Territory, duly certified under the seal of such city, or before a judge of any Court of Common Pleas of the State, district or Territory where taken, provided that

when the said acknowledgment or proof is made before a judge of a Court of Common Pleas in such State, district, or Territory, a certificate under the great seal of the State, or under the seal of the County Court in which it is made, that he is such officer shall be deemed sufficient evidence of his authority for that purpose, and be annexed to and recorded with such deed, acknowledgment, or proof. (Id., p. 154.)

Acknowledgments or proofs of grantors residing or being out of the State, in another State or Territory of the United States, at the time of such acknowledgment or proof may be taken by any officer of said State or Territory authorized at the time of such acknowledgment or proof, by the laws of the State or Territory where such acknowledgment or proof may be taken, to take acknowledgments of deeds of land or real estate in and for such State or Territory, if the certificate thereof shall in all other respects conform to the laws of the State of New Jersey, and each certificate thereof shall be accompanied by a certificate under the great seal of the State or Territory, or under the seal of some court of record of the county in which it shall be made, that the officer before whom such acknowledgment or proof was made was at the time authorized by the laws of such State or Territory to take acknowledgments and proofs of deeds or conveyances for land or real estate in such State or Territory, which said last-named certificate shall be re-

corded with such deed or conveyance. (Sup. to id., p. 131.)

By chapter 133 of Laws of New Jersey of 1885, the clerk of the Court of Common Pleas in every county of that State is authorized to take acknowledgments and proofs of deeds, being required to affix to his signature the words "county clerk."

If the party who shall execute any deed or conveyance of lands, tenements or hereditaments lying and being in the State of New Jersey, or the witnesses thereto, whether such party or witnesses reside in that State or not, happen to be in a foreign kingdom, State, nation or colony, then the said acknowledgment or proof made before any public minister, consul, vice-consul, charge d'affaires, or other representatives of the United States for the time being at any foreign court or government, or before any court of law, or any

notary public, or mayor, or other chief magistrate of any city, borough or corporation of the said foreign kingdom, State, nation, or colony in which the same party or witness happen to be, certified by said officers in the manner such acts are usually authenticated by them, shall be as good and effectual as if it had been made in the State of New Jersey before and certified by one of the justices of the Supreme Court of that State. (Id., p. 154, as amended by chap. 240 of Laws of 1888.)

The surrogate in each county is authorized during his continuance in office to take proofs and acknowledgments of deeds, and is to affix to his signature to the certificate the word "surrogate." (Id.)

By chapter 120 of Laws of New Jersey of 1889, the registers of deeds may take acknowledgments and proofs of deeds in that State.

No. 72.

Certificate of acknowledgment of conveyance of real estate situated in New Jersey, by husband and wife known to the officer.

(Rev. Stats. of New Jersey, 1877, pp. 152, etc.)

STATE OF (NEW JERSEY), { ss.:
County of—,

I, A. B., a (commissioner for the State of New Jersey, residing in the town (or, city) of —, in the county of —, State of —, or, otherwise describe officer), do certify that on the — day of —, in the year one thousand — hundred and —, at the town (or, city) of —, in the county of —, aforesaid, before me personally appeared C. F., and M. F., his wife, both known to me to be the individuals described in, and who have executed the foregoing (or, within) deed (or, instrument) and the contents thereof being by me first made known to them, they severally acknowledged to

me that they had signed, sealed and delivered the said deed as their voluntary act and deed, and said M. F., on a private examination by me, separate and apart from the said husband, further acknowledged to me that she signed, sealed and delivered the said deed (or, instrument) freely and without any fear, threats, or compulsion from her said husband.

In witness whereof, I have hereunto set my hand and official seal, in the county and State aforesaid, this — day of —, one thousand — hundred and —.¹

A. B.,

(Commissioner for the State of New Jersey.)

1. See note 1 to form No. 71.

No. 73.

Certificate of proof of execution of conveyance of real estate situated in New Jersey, by subscribing witness known to the officer.

(Rev. Stats. of New Jersey, 1877, pp. 152, etc.)

STATE OF (NEW JERSEY), }
County of —, } ss.:

I, A. B., a (commissioner for the State of New Jersey, residing in the county of —, State of —, or, otherwise describe officer), do certify that on the — day of —, in the year one thousand — hundred and —, at —, in the county of —, aforesaid, before me personally appeared A. E., with whom I am personally acquainted, and whom I know to be the subscribing witness to the execution of the foregoing (or, within) deed (or, instrument), and who, being duly sworn by me, did depose and say, that he resided in the (city) of —, in the county of —, in the State of —; that he knew C. D., the person described in and who executed the foregoing (or, within) deed (or, instrument); that he saw the said C. D. sign, seal and deliver the same as his voluntary act and deed, and that the said C. D. acknowledged to him (the deponent) that he executed the same, and that he, the said A. E., thereupon became the subscribing witness to the execution of the said deed (or, instrument), which

is to me satisfactory evidence of the due execution of said deed (or, instrument).

In witness whereof, I have hereunto set my hand and official seal, at —, in the county and State aforesaid, this — day of —, one thousand — hundred and —.¹

[SEAL.]

A. B.,

(Commissioner for the State of New Jersey.)

1. See note 1 to form No. 71.

No. 74.

Certificate of proof of execution of deed of real property situated in New Jersey, by a corporation.

(Rev. Stats. of New Jersey, 1877, pp. 152, etc.)

STATE OF (NEW JERSEY), } ss.:
County of —,

I, A. B., a (commissioner for the State of New Jersey, residing in the county of —, and State of —, or, otherwise describe officer), do certify that on the — day of —, in the year one thousand — hundred and — at —, in the county of — aforesaid, personally appeared C. D., with whom I am personally acquainted, and whom I know to be the subscribing witness to the execution of the foregoing (or, within) deed (or, instrument), and who, being duly sworn by me, did depose and say that he subscribed his name to the foregoing (or, within) deed (or, instrument) as a subscribing witness, on the day the same bears date, and being well acquainted with the common seal of the said (naming corporation), knows that the same was and is thereto set, and that the said company did then and there sign and deliver the said deed (or, instrument) as their voluntary act and deed.

In witness whereof, I have hereunto set my hand and official seal, at —, in the county and State aforesaid, this — day of —, one thousand — hundred and —.¹

[SEAL.]

A. B.,

(Commissioner for the State of New Jersey.)

1. See note 1 to form No. 71.

No. 75.

Certificate of acknowledgment of conveyance of real property in New Mexico, by natural persons acting in their own right.

(Laws of New Mexico, of 1889, chap. 46, § 1.)

TERRITORY OF (NEW MEXICO), } ss.:
County of —, }

On this — day of —, A. D., one thousand eight hundred and —, before me personally appeared A. B. (*) (or, A. B., and C. D., his wife), to me known to be the person or persons described in and who executed the foregoing instrument, and acknowledged that he (or, they) executed the same as his (or, their) free act and deed.¹

E. F.

(Official title.)

1. The following are the provisions of chapter 46 of Laws of New Mexico, of 1889, viz.:

SECTION 1. That the following forms of acknowledgment may be used in the case of conveyances or other written instruments affecting real estate, and any acknowledgment so taken and certified shall be sufficient to satisfy all requirements of law relating to the execution or recording of such instruments:

First. In case of natural persons acting in their own right:

TERRITORY OF (NEW MEXICO), } ss.:
County of —, }

On this — day of —, 1—, before me personally appeared A. B. (*) (or, A. B. and C. D.), to me known to be the person (or, persons) described in and who executed the foregoing instrument, and acknowledged that he (or, they) executed the same as his (or, their) free act and deed.

Second. In the case of natural persons acting by attorney: As above

to (*), and from thence as follows: to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same as the free act and deed of said C. D.

Third. In case of corporations or joint-stock associations: As above to (*), and from thence as follows: to me personally known, who, being by me duly sworn (or, affirmed), did say that he is the president (or, other officer or agent of the corporation or association) of (describing the corporation or association), and that the seal affixed to said instrument is the corporate seal of said corporation (or, association), and that said instrument was signed and sealed in behalf of said corporation (or, association) by authority of its board of directors (or, trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or, association).

(In case the said corporation or association has no corporate seal, omit

the words "the seal affixed to said instrument is the corporate seal of such corporation (or, association), and that," and add at the end of the affidavit clause the words "and that said corporation (or, association) has no corporate seal."

(In all cases add signature and title of the officer taking the acknowledgment.)

§ 2. When a married woman unites with her husband in the execution of any such instrument and acknowledges the same in one of the forms mentioned, she shall be described as his wife, but in all other respects her

acknowledgment shall be taken and certified as if she was sole; and no separate examination of a married woman in respect to the execution of any release of dower or other instrument affecting real estate shall be required.

§ 3. A married woman may execute and acknowledge any deed or conveyance by attorney duly appointed by her in writing, signed by herself and her husband; such attorney using the form or the substance of the form prescribed by subdivision 2 of section 1 above cited. (Laws of New Mexico, of 1889, chap. 46.)

No. 76.

Certificate of acknowledgment of conveyance of real property situated in New Mexico, in the case of natural persons acting by attorney.

(Laws of 1889 of New Mexico, chap. 46, § 1.)

TERRITORY OF (NEW MEXICO), }
County of —, } ss.:

As in form No. —, to (*) and from thence as follows: to me known to be the person who executed the foregoing instrument in behalf of C. D., and acknowledged that he executed the same as the free act and deed of said C. D.¹

E. F.

(Official title.)

1. See note 1 to form No. 75.

No. 77.

Certificate of acknowledgment of conveyance of real property situated in New Mexico, in case of corporations or joint-stock associations.

(Laws of New Mexico of 1889, chap. 46, § 1.)

As in form No. 75, to (*) and from thence as follows: to me personally known, who, being by me duly sworn (or, affirmed) did say, that he is president (or, other officer or

agent of the corporation or association) of (describe the corporation), and that the seal affixed to said instrument is the corporate seal of said corporation (or, association), and that said instrument was signed and sealed in behalf of said corporation (or, association) by authority of its board of directors (or, trustees), and said A. B. acknowledged said instrument to be the free act and deed of said corporation (or, association).¹

E. F.
(Official title).

1. See note 1 to form No. 75.

No. 78.

Certificate of acknowledgment of conveyance of real property situated in North Carolina, by grantors.

(Code of North Carolina, § 1246, subd. 7.)

STATE OF (NORTH CAROLINA), {
— county. }

I, A. B. (here give the name of officer as the case may be), do hereby certify that C. D. (here give the name of grantor, and if acknowledged by wife, her name, and add "his wife") personally appeared before me this day and acknowledged the due execution of the foregoing (or, annexed) deed of conveyance (or, other instrument), and (if the wife is a signer) the said (here give wife's name) being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, doth state that she signed the same, freely and voluntarily, without fear or compulsion of her said husband, or any other person, and that she doth still voluntarily assent thereto.

Witness my hand and seal (private or official, as the case may be), this (day of month), A. D. (year).¹

[SEAL.]

(Signature of officer.)

1. For the purposes of this chapter, above form of acknowledgment, No. 78.) (Code of North Carolina, § 1246, subd. 7.)
(viz: Chap. 27 of the Code of North Carolina), the certificate of probate or acknowledgment shall be substantially as follows: (here is given the And when such proof or acknowledgment has been had or taken by a

justice of the peace, the clerk of the court of record shall use substantially the following form of certificate:

STATE OF (—), }
— county, }

The foregoing (or, annexed) certificate of A. B., a justice of the peace of — county, is adjudged to be correct. Let the deed (or, other instrument) with the certificate be registered.

(Signature of the clerk.)

[SEAL OF THE COURT.]

If the acknowledgment or proof of privity examination be taken out of the county where the land is situate or the instrument is required to be registered, or beyond the limits of the State, then in addition to the first certificate before mentioned, the clerk of the Superior Court of the county, or the clerk of the court of record in the county and State in which the person taking the examination, acknowledgment or proof resides, shall certify substantially as follows:

STATE OF (—), } ss.:
— county. }

I hereby certify that A. B. (insert the name of officer taking the proofs, etc.) was at the time of signing the foregoing certificate (a justice of the peace) in and for the county of —, in the State of —, and that his signature thereto is in his own proper handwriting.

In witness whereof, I hereunto set my hand and seal of office, this — day of —, 1—.

(Signature of clerk.)

[SEAL OF OFFICE.]

(Id., subd. 8.)

All deeds conveying lands, letters of attorney or other instruments requiring registration, must be offered for probate, or a certified copy thereof must be exhibited before the clerk

of the Superior Court of any county in the manner following:

First. When the grantor or maker, or subscribing witness resides in the county wherein the land lies, the deed, letter of attorney or other instrument requiring registration, must be acknowledged by such grantor or maker, or proved by the oath of such subscribing witness, before the clerk of the Superior or of the inferior court, or before a notary public or justice of the peace of such county, or of any other county of this State, whether said grantor, maker or subscribing witness resides therein or not, who shall enter his certificate thereon; and such deed, letter of attorney or other instrument with the certificate thereon, on exhibition to the clerk of the Superior Court of said county, shall, if in due form, be admitted by him to probate, and ordered to be registered with the certificates thereto attached.

Second. When the grantor, maker or subscribing witness resides in the State, but out of the county wherein the land lies, such acknowledgment or proof must be made before a judge of the Supreme Court or of the Superior Court, or the inferior court, or a notary public or justice of the peace of the county wherein the grantor, etc., resides; and if such acknowledgment or proof shall be had before a justice of the peace, the clerk of the Superior Court of the county of such justice shall certify upon such deed, etc., the fact of such acknowledgment or proof, and the further fact that such justice was, at the time of taking the same, an acting justice of said county. And the clerk of the Superior Court of the county wherein the land lies, upon the exhibition to him of such deed, etc., together with said certifi-

ates, or with the certificate of a judge of the Supreme or of the Superior Court or notary, shall adjudge the said deed, etc., to be duly acknowledged or proved in the same manner as if taken or made before him, and order the same, with his certificate and the other certificates attached, to be registered.

Third. Where the grantor resides out of the State, the deed, etc., may be acknowledged or proved by the grantor, etc., before a judge of a court of record, notary public having notarial seal, mayor of a city having a seal, or justice of the peace of the State in which such grantor, etc., resides. If such acknowledgment or proof of the deed, etc., be had before a justice of the peace of another

State, then the clerk of the court of record of the county in which said justice resides shall certify, under the seal of his court, that said justice was, at the time of taking such acknowledgment or proof, an acting justice of the peace of said county and State, and that the signature of said justice was in his own proper handwriting.

Fourth. Where the grantor, etc., resides beyond the limits of the United States, the deed, etc., must be acknowledged or proved, by such grantor, etc., before the chief magistrate of any city in the county where the grantor or witness is resident, or before any ambassador, minister, consul or commercial agent of the United States. (Id., § 1246, subd. 1-4.)

No. 79.

Certificate of proof of conveyance of real estate situated in North Carolina, by subscribing witness.

(Code of North Carolina, § 1246.)

STATE OF (NORTH CAROLINA), } ss.:
County of —, }

Be it remembered, that on this — day of —, A. D., 1—, personally appeared before me, A. B., the subscribing witness to the foregoing deed, to me personally known, who on oath duly proves the execution thereof by C. D., for the purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year above mentioned.¹

[SEAL.]

1. See note 1 to form No. 78. (Signature.)

No. 80.

Certificate of acknowledgment, by individual, of conveyance of lands situated in North Dakota.

(Civ. Code Dakota Ter., Comp. Laws, §§ 3277, '8, '9.)

Same as in form No. 21.¹

1. Acknowledgments and proof of deeds, etc., to be used and recorded in the State of North Dakota, may be taken within the State before a jus-

tice, judge, or clerk of any court of record, notary public, mayor of a city, register of deeds, justice of the peace, a United States Circuit or District Court commissioner, a county clerk or a county auditor within their several jurisdictions. (Civil Code Dakota Ter., Comp. Laws, §§ 3277, 3278.)

Out of the State and within the United States, before either a justice, judge or clerk of any court of record of the United States, or of any State or Territory, notary public, commissioner for North Dakota, appointed by the governor of that State, or any other officer of the State or Territory where the acknowledgment is made, authorized by law to take such proof or acknowledgment. (Id., § 3279.)

In foreign countries, before a minister, commissioner, charge d'affaires of the United States, resident and accredited in the country where the acknowledgment or proof is made; consul, vice-consul or consular agent of the United States, resident in the country where the acknowledgment is made; judge of a court of record of the country where the acknowledgment is made; a notary public of

such country; an officer authorized by the laws of such country, or a duly appointed deputy of such officer, in the name of his principal. (Id., § 3280.)

If the certificate of acknowledgment is made by a justice of the peace, if to be used in any other country than where he holds his office, it must be accompanied by a certificate under the hand and seal of the clerk of the District Court, or of any other court of record, where such justice resides, showing that, at the time of taking such acknowledgment, such justice was authorized to take the same, and that the clerk is acquainted with the signature of the justice, and believes the signature to be genuine. (Id., § 3288, subd. 5.)

By the enabling act of said State, approved February 22, 1889, section 24, all laws in force made by said Territory, at the time of its admission to the Union, shall be in force in said State of North Dakota, except as modified or changed by that act or by the Constitution of the State.

See, also, notes to forms Nos. 21-25.

No. 81.

Same certificate of acknowledgment by attorney in fact of grantor.

(Civ. Code Dakota Ter., Comp. Laws, §§ 3277, etc.)

Same as in form No. 22.

No. 82.

Same certificate of acknowledgment by officer of corporation.

(Civ. Code Dakota Ter., Comp. Laws, §§ 3277, etc.)

Same as in form No. 23.

No. 83.

Certificate of proof, by subscribing witness, to conveyance of lands situated in North Dakota.

(Civ. Code Dakota Ter., Comp. Laws, §§ 3277, etc.)

Same as in form No. 24.

No. 84.

Certificate of proof, by party, to conveyance of land situated in North Dakota.

(Civ. Code Dakota Ter., Comp. Laws, §§ 3277, etc.)

Same as in form No. 25.

No. 85.

Petition for appointment of commissioner by New York Supreme Court to take acknowledgment in foreign country.

(New York Rev. Stats., part 2, chap. 3, § 8.)

To the Supreme Court of the State of New York :

The petition of L. M., of the (city) of —, respectfully shows (upon information and belief):

That D. M., late of said city, now resides at (Peking, in the Empire of China); that there is no consul of the United States residing at said (Peking), nor any officer before whom deeds or conveyances and other instruments may be proved under the statutes of this State; that it is desirable that said D. M. should execute and acknowledge (a power of attorney to some person in this State to mortgage her property and to execute her personal bonds, and for other purposes.)

Your petitioner, therefore, prays that a commission may issue to some reputable person, to-wit, C. D., or some other person residing at Peking aforesaid, under the seal of the Supreme Court of this State, authorizing him to take and certify in due form the acknowledgment of said D. M., of

the execution of said (power of attorney) by (her) pursuant to the statute of this State in such case made and provided.

And your petitioner will ever pray, etc.¹

Dated (ALBANY) —, 1—

L. M.

STATE OF NEW YORK, }
(City and) County of —, } ss..

L. M., of said city, being duly sworn, says, that the foregoing petition by him subscribed is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, he believes it to be true.

L. M.

Sworn (or, affirmed) to before me, this — day of —,
1—

M. N.

(Official title.)

1. Every such conveyance, heretofore made, or hereafter to be made, may be acknowledged or proved, without the United States, before any person specially authorized for that particular purpose, by a commission under the seal of the Court of Chancery of this State, to be issued to any reputable person, residing in, or going to, the country where such proof or acknowledgment is to be taken; and the acknowledgment or proof so taken shall be of the like force and validity, as if the same

were taken before a justice of the Supreme Court of this State. (1 R. S. 757, § 8; 7th ed. 2217).

See, as to proof and acknowledgment of conveyances in New York State, note 1 to form No. 89.

The Supreme Court has now general jurisdiction in law and equity, and has succeeded to the powers conferred upon the Court of Chancery by the above provisions. (Const. N.Y., art. 6, § 6; R. S., 7th ed., 95; Reid v. Allerton, 3 Robt. 551, 559; De-raismes v. Dunham, 22 Hun, 86.)

No. 86.

Order of Supreme Court directing commission to issue for taking and certifying acknowledgment in foreign country.

(N. Y. R. S., part 2, chap. 3, § 8.)

At a Special Term of the Supreme Court, held at the (city) of —, on the — day of —, 18—.

Present: Hon. W. L. L., Justice.

It appearing that sufficient cause exists therefor by the petition of D. M., dated the — day of —, 18—, and this day filed:

Now, therefore, in pursuance of the statute of this State, in such case made and provided, it is hereby ordered that C. D., residing at (Peking in the Empire of China), be and he hereby is appointed a commissioner for the purpose of taking the acknowledgment of D. M. now residing at (Peking), aforesaid, of the execution by (her) of a certain (power of attorney to mortgage her property and to execute her personal bonds and for other purposes), and to duly certify said acknowledgment, and that a commission issue under the seal of this court to C. D., appointing him such commissioner.¹

1. See note 1 to last form, No. 85, and the note therein referred to.

No. 87.

Commission to take and certify acknowledgment in foreign country.

(N. Y. R. S., part 2, chap. 3, § 8.)

The People of the State of New York; To C. D. of (Peking in the Empire of China), greeting:

Whereas, it appears to our Supreme Court, that D. M., now residing at (Peking in the Empire of China), desires to execute and acknowledge a (power of attorney to mortgage her property and to execute her personal bonds and for other purposes), and that it is necessary that a commissioner should be appointed at said (Peking), for the purpose of taking her said acknowledgment and of duly certifying the same:

We have, therefore, appointed and do hereby appoint you a commissioner, pursuant to the statute in such case provided, for the purpose of taking the acknowledgment of D. M. aforesaid, of the execution by her of said (power of attorney), and of duly certifying said acknowledgment.

Witness, the Hon. W. L. L., a justice of the said court, at the (city) of — in the county of —, the — day of —, 1—.

[SEAL.] I. J.,

J. L.,

Attorney for Petitioner.

County Clerk of — county.¹

(Office address.)

1. See note 1 to form No. 86, and the note therein referred to

No. 88.

Certificate of acknowledgment of instrument, by commissioner appointed pursuant to statute.

(N. Y. R. S., part 2, chap. 3, § 8.)

(EMPIRE OF CHINA), }
City of (PEKING), } ss.:

On this — day of —, in the year 1—, before me, a commissioner residing at (Peking, China), and duly authorized by a commission issuing out of the Supreme Court of the State of New York, under the seal of that court, dated —, 1—, to take the acknowledgment of D. M., residing in said (city) of (Peking), of the execution by her of the foregoing (power of attorney), and to duly certify said acknowledgment, appeared the said D. M., to me known to be the individual described in and who executed the foregoing instrument, and to me acknowledged the execution thereof by her.¹

C. D.,
 Commissioner.

See note 1 to form No. 86, and notes therein referred to.

No. 89.

Certificate of acknowledgment or proof, in New York State, by grantor known to officer.

(N. Y. R. S., part 2, chap. 3, § 9.)

STATE OF (NEW YORK), }
County of —, } ss.:

On this — day of —, in the year 1—, before me, the subscriber, personally came A. B. (and C. B., his wife), to me known to be the person (or, persons) (or, the president of the (name of corporation), the corporation) described in, and who (or, which) executed the within instrument, and (severally) acknowledged that he (or, they) executed the same.¹

I. J.,
 Commissioner of Deeds.
 (or, other official description.)

[Or, if proved by subscribing witness in New York State, certificate as follows:]

STATE OF (NEW YORK), } ss.:
County of —, }

On this — day of —, 1—, before me came K. L., to me known, the subscribing witness within (or, above) named, who, being by me sworn, did depose and say, that he resides in the (city) of —, in the county of —, and State aforesaid; that he knows A. B. (and C. D.), the person (or, persons) whose name is (or, whose names are) subscribed to the foregoing instrument, to be the person (or, persons) described in and who executed said instrument; that he was present, and saw the said A. B. (and C. D.) execute the same, and that he thereupon subscribed his name as a witness thereto.

I. J.

(Official description.)

1. The statutes of New York require that every grant in fee or of a freehold estate shall be subscribed and sealed by the person from whom the estate or interest conveyed is intended to pass, or his lawful agent; if not duly acknowledged previous to its delivery, its execution and delivery shall be attested by at least one witness; or if not so attested, it shall not take effect as against a purchaser or incumbrancer, until so acknowledged. (1 R. S. 738, § 137; 7th ed. 2194.) See as to seal § 13, ch. 677 Laws of 1892.

Every conveyance of real estate within that State is required to be recorded in the office of the clerk of the county where such real estate shall be situated; and every conveyance not so recorded is made void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate, or any portion thereof, whose conveyance shall be first duly recorded. (Id. 756, § 1; 7th ed. 2215.)

To entitle any conveyance hereafter made, to be recorded by any county clerk, it shall be acknowledged by the party or parties executing the same, or shall be proved by a subscribing witness thereto, before any one of the following officers:

First. If acknowledged or proved within this State (the chancellor), justices of the Supreme Court (circuit judges, Supreme Court commissioners), judges of County Courts, mayors and recorders of cities or commissioners of deeds; but no county judge or commissioner of deeds for a county or city shall take any such proof or acknowledgment out of the city or county for which he was appointed.

Second. If acknowledged or proved out of the State and within the United States, the chief justice and associate justices of the Supreme Court of the United States, district judges of the United States, the

judges or justices of the Supreme, Superior or Circuit Court of any State or Territory within the United States, and the chief judge or any associate judge of the Circuit Court of the United States, in the District of Columbia: but no proof or acknowledgment taken by any such officer shall entitle a conveyance to be recorded, unless taken within some place or Territory to which the jurisdiction of the court to which he belongs shall extend. (1 R. S. 756, § 4; 7th ed., 2216.)

The officers above mentioned in subdivision 1 in brackets, have been abolished.

By chapter 276 of Laws of 1847, § 13, as amended by chapter 175 of Laws of 1851, power is given to surrogates of the State to take the proof and acknowledgment of deeds and other instruments in writing, with the same force and effect as if taken by a county judge, and for which he may charge the same fees. (Laws of 1851, p. 331; R. S., 7th ed., 412.)

By chapter 238 of Laws of 1840, the office of commissioner of deeds is abolished in the several towns of the State; and all the powers and duties of such commissioners shall thereafter be executed by the justices of the peace in said towns respectively. (Laws of 1840, p. 187; R. S., 7th ed., 843.)

By chapter 360 of Laws of 1859, notaries public of that State, in addition to their present powers, are authorized to take the proof and acknowledgments of deeds, mortgages and any other papers for use or record in that State, in all the cases where the same may be taken by commissioners of deeds, and under the same rules, regulations and requirements prescribed to commissioners of deeds, and such notaries' acts may be per-

formed without official seal. (Laws of 1859, p. 869; R. S., 7th ed., 2375.)

By chapter 508 of the Laws of 1863, power is given to notaries public of the State, to take and certify the acknowledgment and proof of deeds and other instruments in writing in all cases where justices of the peace or commissioners of deeds may take and certify the same, and all acts of notaries public in making or taking such certificates of acknowledgment or proof since the passage of the act, chapter 360 of the Laws of 1859, are thereby confirmed and declared valid. (Laws of 1863, p. 880; R. S., 7th ed., 2375.)

By chapter 703 of the Laws of 1872, any notary public duly appointed and qualified in and for the city and county of New York, or the county of Kings of that State, shall have full power and authority to do and perform anywhere in said city and county of New York, or county of Kings, any and every act and thing which they are by law authorized to do and perform within the county in and for which they are appointed respectively. (Laws of 1872, p. 1680; R. S., 7th ed., 2375, § 1.)

It is further provided by the last-mentioned act, that whenever a notary public of the city and county of New York, or county of Kings, pursuant to the authority given by the preceding section, shall take the proof or acknowledgment of any deed or other instrument of writing, to be used or recorded in that State, in a county other than that in and for which he shall have been appointed, he shall state in the body of such certificate of proof or acknowledgment, or after his signature thereto, as such notary, the name of the county in and for which he shall have been so appointed; and before any

deed or instrument in writing so acknowledged shall be entitled to be recorded in any county other than that in and for which such notary was appointed, there shall be subjoined or attached to the certificate of proof or acknowledgment, signed by such notary, a certificate under the hand and official seal of the clerk of the county in and for which such notary was appointed, specifying that he was at the time of taking such proof or acknowledgment a notary public in and for said county, commissioned and sworn, and duly authorized to take the same; that such clerk is well acquainted with the handwriting of such notary, and verily believes that the signature to said certificate of proof or acknowledgment is genuine. (Id., § 2.)

For general form of clerk's certificate, see form No. 103.

See, also, the provisions of chapter 807 of the Laws of 1873, as amended by chapter 140 of Laws of 1883 (Laws of 1883, p. 141), entitled "An act concerning notaries public in the counties of Kings, Queens, Richmond, Westchester, Rockland and Orange, and in the city and county of New York, and authorizing them to exercise the functions of their office therein;" and of chapter 270 of Laws of 1884, as amended by chapter 61 of Laws of 1885 (Laws of 1885, p. 122), entitled "An act to extend the jurisdiction of notaries public."

Every acknowledgment or proof of a deed or mortgage made or taken before the mayor of either of the cities of Philadelphia or Baltimore (Laws of 1829, chap. 222, p. 348; R. S., 7th ed., 2222); also before the mayor of any city in the United States, shall be as valid and effectual as if taken before one of the justices of the Supreme Court of New York State.

Laws of 1845, chap. 109, p. 89; R. S., 7th ed., 2224.)

When made by any person without the State of New York and within any other State or Territory of the United States, such acknowledgment or proof may be made before any officer of such State or Territory, authorized by the laws thereof to take the proof and acknowledgment of deeds. But no such acknowledgment is valid, unless the officer taking the same shall know or have satisfactory evidence that the person making such acknowledgment is the individual described in and who executed the said deed. And there must be attached or subjoined to the certificate of proof or acknowledgment signed by such officer, a certificate under the name and official seal of the secretary of state of the State in which such officer resides, or under the name and official seal of the clerk, register, recorder or prothonotary of the county in which such officer resides, or the clerk of any court thereof having a seal, specifying that such officer was, at the time of taking such proof or acknowledgment, duly authorized to take the same, and that such secretary of state, clerk, register, recorder or prothonotary is well acquainted with the handwriting of such officer, and verily believes that the signature to said certificate of proof or acknowledgment is genuine. (Laws of 1848, chap. 195, p. 303, as amended by Laws of 1867, chap. 557, p. 1515, and by Laws of 1891, chap. 100, p. 117; and of 1892, chap. 208.)

The provisions of the act of 1867 in regard to the certificate of the clerk, etc., are made applicable to all conveyances or written instruments theretofore proved, or acknowledged and recorded, or to which a certi-

cate has been subjoined or attached, as provided by that act, but shall not affect any litigation then pending. (Laws of 1867, chap. 557, p. 1515, § 2; R. S., 7th ed., 2229.)

Also, such acknowledgment or proof may be taken by commissioners appointed by the governor of that State, in the other States and Territories of the United States, and in the District of Columbia, whose authority to act and the genuineness of whose signatures and seals shall be attested by the certificate of the secretary of state of the State of New York, attached to the commissioner's certificate. (Laws of 1850, chap. 270, as amended by Laws of 1876, chap. 58, p. 47; R. S., 7th ed., 2225.)

No such commissioner shall be authorized to take the proof or acknowledgment of any deed or instrument at any place other than within the city or county within which he shall reside at the time of his appointment; and every certificate of any such commissioner to any proof or acknowledgment taken before him, shall specify the day on which, and the city, or town and county, within which the same was taken or administered; and without such specification, the said certificate shall be wholly invalid, inoperative and void. (Id.)

If the party or parties executing such conveyance shall be, or reside, in any State or kingdom in Europe, or in North or South America, the same may be acknowledged or proved before any minister plenipotentiary, or any minister extraordinary, or any charge des affaires of the United States, resident and accredited within such State or kingdom. If such parties be or reside in France, such conveyance may be acknowledged or proved before the consul of

the United States, appointed to reside at Paris; and if such parties be or reside in Russia, such conveyance may be acknowledged or proved before the consul of the United States, appointed to reside at St. Petersburg. (2 R. S. 757, § 5; 7th ed., 2216)

If the party to such conveyance be or reside within the United Kingdom of Great Britain and Ireland, or the dominions thereunto belonging, the same may be acknowledged or proved before the mayor of the city of London, the mayor or chief magistrate of the city of Dublin, or the provost or chief magistrate of the city of Edinburgh, or before the mayor or chief magistrate of Liverpool, or before the consul of the United States, appointed to reside at London. (Id., § 6; 7th ed., 2217.)

Such proof or acknowledgment, duly certified under the hand and seal of office of such consuls, or of the said mayors or chief magistrates respectively, or of such minister or charge des affaires, has the like force and validity as if the same were taken before a justice of the Supreme Court of that State. (Id., § 7; 7th ed., 2217.)

As to acknowledgment or proof of conveyance without the United States, before a person specially authorized for that particular purpose, by a commission under the seal of the Court of Chancery of that State, see 2 R. S. 757, § 8; 7th ed., 2217, and see forms Nos. 85, 86, 87, 88, and notes thereto.

Every acknowledgment or proof of a deed or mortgage made or taken before any consul of the United States resident in any foreign port or country, or before a judge of the highest court in Upper or Lower Canada, and certified by them respectively, is as valid and effectual as if taken be-

fore one of the justices of the Supreme Court of that State. (Laws of 1829, chap. 222, p. 348; R. S., 7th ed., 2222.)

The acknowledgment or proof of any deed or other written instrument, required to be proved or acknowledged in order to entitle the same to be recorded or read in evidence in that State, by any person being in any foreign country, may be made before any consul-general, vice-consul, deputy consul, consular agent, vice-consular agent, commercial agent or vice-commercial agent of the United States government, resident in any foreign port or country; and when certified by him, under his seal of office or under the seal of the consulate or agency to which he is attached, to have been made before him by the party executing or being a subscribing witness to the same, and that the said party executing the same is known or proven to him to be the same person who is described in and who executed the same, shall be as valid and effectual as if taken before one of the justices of the Supreme Court in that State. (Laws of 1863, chap. 246, as amended by Laws of 1888, chap. 246, p. 407.)

The governor is authorized by chapter 136 of the Laws of 1875, as extended by chapter 233 of the Laws of 1883, to appoint and commission not more than ten commissioners in each city of any foreign State or country, where, in his discretion, such appointment may be necessary, who shall continue in office for four years, and shall have authority to take the acknowledgment or proof of the execution of any deed, etc. The certificate of acknowledgment or proof of such commissioners requires to be authenticated by the certificate of

the secretary of state or that State. (Laws of 1875, p. 119; Laws of 1883, p. 238; R. S., 7th ed., 2230.)

Such acknowledgment or proof, by any person being in the Dominion of Canada, may be made (in addition to the persons already authorized by law) before the judge of any court of record, or the mayor of any city, within the said Dominion of Canada; but no such acknowledgment or proof shall be valid unless the officer taking the same knows, or has satisfactory evidence that the person making it is the individual described in and who executed the instrument. And there must be subjoined or attached to the certificate of proof or acknowledgment, if taken before a judge of a court of record, a certificate under the name and official seal of the clerk of the court, that there is such a court; that the judge before whom the proof or acknowledgment is taken is a judge thereof; that such court has a seal; that he is the clerk thereof; that he is well acquainted with the handwriting of such judge, and verily believes his signature genuine. If the proof or acknowledgment be taken before the mayor of any city, it shall be certified by him under his seal of office, and such proof or acknowledgment taken pursuant to the foregoing provisions shall be as valid and effectual as if taken before a justice of the Supreme Court of the State. (Laws of 1870, chap. 208, p. 503; R. S., 7th ed., 2229.)

The acknowledgment by married women, or the proof of the execution by married women, of deeds or other written instruments in that State, may be made, taken and certified in the same manner as if they were sole. (Laws of N. Y. 1879, chap. 249, as amended by Laws of 1880, chap. 300, p. 443; R. S., 7th ed., 2233.)

No acknowledgment of any conveyance having been executed shall be taken by any officer, unless the officer taking the same shall know, or have satisfactory evidence, that the person making such acknowledgment is the individual described in, and who executed such conveyance. (2 N. Y. R. S. 758, § 9; 7th ed., 2217.)

The proof of the execution of any conveyance shall be made by a subscribing witness thereto, who shall state his own place of residence, and that he knew the person described in, and who executed such conveyance; and such proof shall not be taken, unless the officer is personally acquainted with such subscribing witness, or has satisfactory evidence that he is the same person, who was a subscribing witness to such instrument. (2 N. Y. R. S. 758, § 12; 7th ed., 2218.)

Every officer who shall take the acknowledgment or proof of any conveyance shall indorse a certificate thereof, signed by himself, on the conveyance; and in such certificate shall set forth the matters hereinbefore required to be done, known or proved, on such acknowledgment or proof, together with the names of the witnesses examined before such officer, and their places of residence, and the substance of the evidence by them given. (Id., § 15.)

Every conveyance, acknowledged, or proved and certified in the manner above prescribed, by any of the officers before named, may be read in evidence, without further proof thereof, and shall be entitled to be recorded. (Id., § 16.)

Where any conveyance shall be proved or acknowledged before any judge of the County Courts, not of the degree of counselor at law, in the Supreme Court, or before any

commissioner of deeds appointed for any county or city, it shall not be entitled to be read in evidence, or to be recorded, in any other county than that in which such judge or commissioner shall reside, unless in addition to the preceding requisites there shall be subjoined to the certificate of proof or acknowledgment, signed by such judge or commissioner, a certificate under the hand and official seal of the clerk of the county in which such judge or commissioner resides, specifying that such judge or commissioner was, at the time of taking such proof or acknowledgment, duly authorized to take the same, and that the said clerk is well acquainted with the handwriting of such judge or commissioner, and verily believes that the signature to the said certificate of proof or acknowledgment is genuine. (2 N. Y. R. S. 759, § 18; 7th ed., 2219.)

The same certificate is required in the case of acknowledgments or proof of deeds, etc., taken by notaries public (N. Y. Laws of 1859, chap. 360, p. 869; N. Y. Laws of 1863, chap. 508, p. 880; R. S., 7th ed., 2375), and by justices of the peace. (N. Y. Laws of 1840, chap. 238, p. 187; R. S., 7th ed., 843.)

For form of such certificate see form No. 103.

Where the witnesses to any conveyance authorized by chapter 3 of part 2 of the Revised Statutes, to be recorded, shall be dead, then the same may be proved before any officer authorized to take the proof and acknowledgment of deeds, other than commissioners of deeds, and county judges not of the degree of counsel in the Supreme Court. (2 R. S. 761, § 30; 7th ed., 2221.)

The proof of the execution of any conveyance in such case shall be

made by satisfactory evidence of the death of all witnesses thereto, and of the handwriting of such witnesses, or any one of them, and of the grantor; all which evidence, with the names and places of residence of the witnesses examined before him, shall be set forth by the officer taking the same, in his certificate of proof. (Id., § 31.)

Any conveyance proved and certified, pursuant to the two last sections, may be recorded in the proper office, if the original deed be at the same time deposited in the same office, there to remain, for the inspection of all persons desiring to examine the same. (Id., § 32.)

The recording and deposit of any conveyance, proved and certified according to the provisions of the three last sections, shall be constructive notice of the execution of such conveyance, to all purchasers subsequent to such recording; but such proof, recording, or deposit, shall not entitle such conveyance, or the record thereof, or the transcript of such record, to be read in evidence. (Id., § 33.)

For form of such proof see form No. 107, and see notes to that form.

The certificate of acknowledgment of a county judge is entitled, it seems, to be read in evidence, or recorded, in another county, without being authenticated by the clerk of the county of which the officer is judge; whether such judge is or is not of the degree of counselor at law. (People v. Hurlbut, 44 Barb. 126.) See, also, Hunt v. Johnson (19 N. Y. 279), cited *infra*.

Where persons acknowledging the execution of an instrument, although previously unknown to the officer, are introduced to him by a mutual acquaintance, this, if it satisfies the

conscience of the officer as to the identity of the parties, is sufficient to authorize him to take the acknowledgment and give the certificate. (Wood v. Bach, 54 Barb. 134, rev'g Jones v. Bach, 48 id. 568; Rexford v. Rexford, 7 Lans. 6; Rippel v. Hammond, 4 Colo. 211.)

Where the certificate of a justice of the peace, in 1711, of the acknowledgment of a deed, stated that A. and B., his wife, came before him "to acknowledge this indenture to be their acts and deed," it was held that the certificate could not be understood to mean merely that the parties came before the justice to acknowledge the deed, or with such an intent; but, further, that they did acknowledge it; and, that, after such a lapse of time, the private examination of the wife ought to be presumed; and that the estate acquired under a deed thus acknowledged was confirmed by the act of 1771, "to confirm certain ancient conveyances." (Jackson v. Gilchrist, 15 Johns. 89.) See, also, Baslior v. Stewart (54 Md. 376), and Constantine v. Van Winkle (6 Hill, 177), in which latter case the case of Jackson v. Gilchrist is examined.

On the same paper, and following the signatures to an assignment for the benefit of creditors, was a notary's certificate of acknowledgment. It bore the same date as the assignment, and named as the persons acknowledging, the ones who apparently executed the assignment. It stated that the persons named were to the notary known "to be the individuals described in and who executed *the same*." Held, that the words, "*the same*," referred to the instrument to which the certificate was appended, and sufficiently identified it; and that the certificate showed

a due acknowledgment of the instrument. (Smith v. Boyd, 101 N. Y. 472, rev'g S. C., 10 Daly, 149.) See, also, Claflin v. Smith (35 Hun, 372; S. C., 15 Abb. N. C. 241).

An officer is not disqualified from taking the acknowledgment of a deed, by reason of his relationship to the parties to it. (Remington Paper Co. v. O'Dougherty, 81 N. Y. 474; Lynch v. Livingston, 6 id. 422, aff'g S. C., 8 Barb. 463.)

A certificate of acknowledgment taken in 1828, under 1 Revised Laws, chapter 369, sections 1 and 2, stating that the persons acknowledging were known to the officer "to be the persons who executed" the deed, is a substantial compliance with that statute and sufficient in form. (West Point Iron Co. v. Reymert, 45 N. Y. 703.) See, also, Hunt v. Johnson (19 N. Y. 279, 294), to the effect that a certificate of acknowledgment, made in October, 1813, stating that the acknowledging parties were known to the officer as the persons described in the deed, but not stating that they were known to him as the persons who executed the deed, is sufficient, and see Jackson v. Gumaer (2 Cow. 552), holding that under the same act (1 R. L. 369), it is sufficient for the officer to say, "On, etc., before me, A. B., one, etc., came J. S., to me known, and acknowledged that he executed the above mortgage (or, deed), for the uses and purposes therein mentioned," etc., without saying "to me known to be the person described in and who executed the said mortgage" (or, deed). See, also, Trustees Can. Academy v. McKechnie (90 N. Y. 619, cited *infra*); Same v. Same (19 Hun, 62); Smith v. Boyd (101 N. Y. 472); Cuykendall v. Douglass (19 Hun, 577); Irving v. Campbell (121 N. Y. 353).

An authority to take acknowledgment of deeds authorizes the acknowledgment of mortgages. (Trustees of Can. Academy v. McKechnie, 90 N. Y. 619.)

The attestation clause of a mortgage stated that the mortgagor, a corporation, had caused it to be signed by its president, and sealed with the corporate seal. It was signed by one G. as president, and the corporate seal was attached. The only proof of execution was a certificate of a commissioner of deeds upon the mortgage, made in 1828, which was to the effect that I., the subscribing witness, being sworn, deposed that he knew G., "the person described in and who executed the said deed;" that he saw G. execute the same, and that the seal affixed was the seminary seal. *Held*, that under the statute then in force (1 R. L. 1813, p. 369, § 1), the certificate was sufficient to prove the execution of the instrument. (Id.)

I., at the time of the execution of the mortgage, owned three shares of capital stock of the corporation. *Held*, that he was not an interested witness within the meaning of the law then in force, and was competent to prove the execution of the instrument, as he was a witness to establish a claim adverse to his interest. (Id.)

The sufficiency of the proof of the execution must be determined by the law in force at the time it was taken. (Id.)

Notaries public of the State of New York can take acknowledgment of deeds, etc., anywhere within the county for which they are appointed, and in which they reside; and when thus taken, they are entitled to be recorded in any other county in the State, when the signature and official character of the notary are attested

by the usual clerk's certificate. Where these conditions are not complied with, and these requirements do not exist, the conveyance is not entitled to be recorded. (*Utica & Black River R. R. Co. v. Stewart*, 33 How. Pr. 312.)

A conveyance executed by a county judge in his official capacity is entitled to be recorded, although not acknowledged by him, as he is authorized to take acknowledgments and his official signature is entered in the clerk's office. (*Chamberlain v. Taylor*, 36 Hun, 24, 38.)

The statute of 1830 (1 R. S. 759, § 18; 7th ed., 2219), requiring the certificate of the clerk of the county in which a judge of the Common Pleas, not a counselor at law, resided, in order to entitle his certificate of acknowledgment to be read in another county, does not apply to acknowledgments taken by such officers before the passage of that act. (*Hunt v. Johnson*, 19 N. Y. 279.)

The separate acknowledgment formerly required to be made by a married woman, *held*, to be unnecessary in case of a married woman who had procured a separation from her husband in the former Court of Chancery, by the terms of which all the authority and control of the husband had ceased and been forever divested, as if the parties had never been married. (*Delafield v. Brady*, 38 Hun, 404; *aff'd*, S. C., 108 N. Y. 524.)

As the statutory provision was made for the exclusive benefit of the wife, objections to the sufficiency of the acknowledgment could only be taken by the wife or persons claiming under her, and not by strangers to her title. (*Id.*)

Since the act of 1849, chap. 375, relating to the separate property of married women, the acknowledg-

ment of a married woman need not state that she, on a private examination, separate and apart from her husband, executed the instrument freely and without any fear or compulsion of her husband. (*Allen v. Reynolds*, 36 N. Y. Super. Ct. 297.)

The certificate need not be literally "indorsed" on the deed. A certificate subjoined, and expressing the same things *mutatis mutandis*, as if indorsed, has the same effect. (*Thurman v. Cameron*, 24 Wend. 87.)

See, further, generally as to acknowledgment and proof of deeds in New York State, *Jackson v. Humphrey* (1 Johns. 498); *Van Cortland v. Tozer* (20 Wend. 423, *aff'd* S. C., 17 id. 338); *Dias v. Glover* (Hoffm. 71); *Lynch v. Livingston* (8 Barb. 463); *Meriam v. Harsen* (2 Barb. Ch. 232); *St. John v. Crael* (5 Hill, 573); *Lovett v. Steam Saw-Mill Association* (6 Paige, 54); *Johnson v. Bush* (3 Barb. Ch. 207); *Jackson v. Phillips* (9 Cow. 94); *Hollenbeck v. Fleming* (6 Hill, 303); *Norman v. Wells* (17 Wend. 136); *Goodhue v. Berrien* (2 Sandf. Ch. 630); *Dibble v. Rogers* (13 Wend. 537); *Jackson v. Livingston* (6 Johns. 149); *Gillett v. Stanley* (1 Hill, 121); *Dennis v. Tarpenny* (20 Barb. 271); *Miller v. Link* (2 Th. & C. (N. Y. Supr. Ct.) 86); *Mutual Life Ins. Co. v. Corey* (54 Hun, 493); *Irving v. Campbell* (121 N. Y. 353, *rev'd* S. C., 24 J. & S. 224); 14 Abb. N. C. 452, *note*; *Delafield v. Brady* (108 N. Y. 524); *Stehlin v. Golding* (15 N. Y. State Rep'r, 814); *Smith v. Tim* (14 Abb. N. C. 447, 452, *note*, *rev'd* as *Smith v. Boyd*, 101 N. Y. 472).

As to proof or acknowledgment of conveyance in that State by a corporation, see form No. 94, and note 1 to that form.

No. 90.

Certificate of acknowledgment in New York State, by grantor or grantors identified by witness known to the officer.

(N. Y. R. S., part 2, chap. 3, § 9.)

STATE OF (NEW YORK), }
County of —, } ss.:

On this — day of —, 1—, before me came the above-named A. B. (and C. D.), the grantor (or, grantors) named in the foregoing instrument, and acknowledged that he (or, they) had executed the said instrument for the uses and purposes therein mentioned; and at the same time before me came G. H., to me known, who, being by me sworn, did say, that he resides in the (town) of —, in the county aforesaid, that he knew the said A. B. (and C. D.), the person (or, persons) making the said acknowledgment (or, acknowledgments) to be the individual (or, individuals) described in and who executed the said instrument, which to me is satisfactory evidence thereof.¹

J. K.

(Official title.)

1. See 1 R. S. 758, § 9; 7th ed., 2217, cited on page 100, in note 1, to form No. 89.

An acknowledgment in the following form: "Personally appeared before me, R. S. L., signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed before me," was held to be fatally defective under this sec-

tion, as it did not certify that the party acknowledging the instrument was known to the notary to be the party named in and who had executed the same. (Miller v. Link, 2 Th. & C. (N. Y. Supr. Ct.) 86.) And see cases and statutes cited in note 1, above referred to, generally as to proof and acknowledgment of deeds.

No. 91.

Certificate of acknowledgment in New York State by husband and wife known or identified to officer.

(N. Y. R. S., part 2, chap. 3, § 9.)

STATE OF (NEW YORK), }
County of —, } ss.:

On this — day of —, 1—, before me personally came F. K. and G. K. (his wife), and severally acknowledged that they had executed the foregoing conveyance (or, instru-

ment); (*) and, I certify that I know said F. K. to be one of the persons described in and who executed the foregoing instrument; and at the same time appeared before me H. R., to me known, who, being by me sworn, did say, that he resided in the (city) of —, in the county of —, and that he knew the said G. K. to be (the wife of said F. K.), one of the persons (or, individuals) described in and who executed the foregoing instrument, which is to me satisfactory evidence thereof.¹

J. K.

(Official title.)

Or, if both persons are identified, as above to (*), and from thence as follows:

And, at the same time came before me G. K., to me known, who, being by me sworn, did say, that he resided at the (city) of —, in said county, and that he knew the said F. K. and G. K. to be the same individuals described in, and who executed the within conveyance, which is to me satisfactory evidence thereof.

J. K.

(Official title.)

1. See note 1 to form No. 89, generally as to acknowledgment and proof of deeds in New York State. And see Laws of 1879, chap. 249, p. 327, as amended by Laws of 1880, chap. 300; R. S., 7th ed., 2233, and *Allen v. Reynolds* (36 N. Y. Super. Ct. 297), cited in that note, as to acknowledgment and proof of conveyances executed by married women.

No. 92.

Certificate of acknowledgment in New York State, by under-sheriff, of deed executed by him in the name of the sheriff.

(N. Y. R. S., part 2, chap. 3, § 9.)

STATE OF (NEW YORK), }
County of —, } ss.:

On this — day of —, 1—, G. F., to me known, before me personally came, and acknowledged that he, as under-sheriff of M. R., the sheriff of the county of —, had executed the foregoing conveyance, in the name and as the act and deed of the said sheriff.¹

K. L.

(Official title.)

1. See statutes and cases cited in note 1 to form No. 89, generally as to proof and acknowledgment of deeds in New York State.

No. 93.

Certificate of acknowledgment in New York State, by person conveying under power of attorney.

(N. Y. R. S., part 2, chap. 3, § 9.)

STATE OF (NEW YORK), }
County of —, } ss.:

On the — day of —, 1—, before me came J. P., to me known, and acknowledged that he executed the within conveyance (or, instrument), as the act and deed of B. M., therein described, by virtue of a power of attorney, duly executed by the said B. M., bearing date the — day of —, 1—, and recorded in the office of the clerk of the county of —, on the — day of —, 1—.¹

M. F.

(Official title.)

1. Whether, since the statutes of 1848 and 1849, for the protection of the property of married women, a power of attorney to convey her land, executed by a wife to her husband, is valid, *quere.* (Hunt v. Johnson, 19 N. Y. 281.) See L. 1878, chap. 300 § 1.

See, also, generally as to acknowledgment and proof of deeds in New York State, note 1 to form No. 89.

Where a deed is executed by the attorney of the grantor, lawfully authorized, he is the party executing the same, who may make the acknowl-

edgment; and such has been the uniform construction of the statute. (Lovett v. Steam Saw-Mill Association, 6 Paige, 60, *per* Walworth, Chancellor.)

A deed executed by an attorney may be recorded, upon his acknowledgment before the proper officer, or upon due proof that such deed was executed by him, without proving the power under which the attorney acted in executing such deed. (Johnson v. Bush, 3 Barb. Ch. 207.)

No. 94.

Certificate of proof in New York State, by officer of corporation known to the officer.

(N. Y. R. S., part 2, chap. 3, § 12.)

STATE OF (NEW YORK), }
County of —, } ss.:

On the — day of —, in the year 1—, before me personally came A. B., to me known, who being by me duly sworn did depose and say, that he resided in the (city) of —, that he is the (president) of the (name of corporation),

the corporation described in and which executed the above instrument (*) ; that he knew the seal of said corporation ; that the seal affixed to said instrument was such corporate seal ; that it was so affixed by order of the (board of directors) of said corporation, and that he signed his name thereto by like order¹ [or, as above to (*) and from thence as follows : that said corporation has no seal, and that he signed his name thereto by order of the board of directors of said corporation]¹.

J. K.
(Official title.)

1. See Trustees of Can. Academy v. McKechnie (90 N. Y., 618), cited on page 102, in note 1 to form No. 89, and the cases and statutes cited in that note, also Lovett v. Steam Saw-Mill Association (6 Paige, 54), as to proof of deed executed by a corporation.

The officer or agent of a corporation, who executes a deed in the name of the corporation by affixing thereto the impression of the common or corporate seal intrusted to his care, is the party executing the same, under 1 R. L. 367, § 1; 1 R. S. 756, § 4; as it is impossible that a corporation aggregate should execute or acknowledge a deed in person. (Lovett v. Steam Saw-Mill Association, *supra*.)

Such officer stands also in the character of a subscribing witness to the execution of the deed by the corporation, and may be examined by the commissioner of deeds, etc., to prove that the seal affixed by him is the common seal of the corporation whose deed the conveyance or instrument to which it is affixed purports to be. (Id.)

The seal of a corporation aggregate, affixed to a deed, is, of itself, *prima facie* evidence that it was so affixed by the authority of the corporation; especially if it is proved to have been put to the deed by an officer who was intrusted by the corporation with the custody of such seal. See cases above cited.

2. Insert the words in brackets if the corporation has no seal.

No. 95.

Certificate of proof in New York State, by subscribing witness identified to the officer.

(N. Y. R. S., part 2, chap. 3, § 12.)

STATE OF (NEW YORK), } ss.:
County of —, }

On this — day of —, 1—, before me, personally came F. B., who, being by me duly sworn, did depose and say, that he resides in the (town) of —, in the county of —; that he knew A. B., within named, and knew him to be the person described in, and who executed the within conveyance (or, instrument); that he saw the said A. B. exe-

ecute the same, and that he thereupon subscribed his name thereto as a subscribing witness; and at the same time, before me came S. B., to me known, who, being by me sworn, did say, that he resides in the (town) of —, in the county of —, and that he knows the said A. B. to be the same person who was a subscribing witness to the within conveyance, which is to me satisfactory evidence thereof.¹

J. K.

(Official title.)

1. See, as to proof of execution of cited in note 1, to form No. 89, and instrument by subscribing witness, generally as to proof and acknowledgment of deeds. See that note. § 12, p. 758, 1 R. S., 7th ed., 2218,

No. 96.

Petition for subpoena, requiring witness to a conveyance to appear and testify touching the execution of such conveyance.

(N. Y. R. S., part 2, chap. 3, § 13.)

To Hon. J. N., County Judge of — county (or, other proper direction).

The petition of M. F., of the (city) of —, in the county of —, respectfully shows:

That on or about the — day of —, in the year 1—, a conveyance was executed and delivered to your petitioner (or, to A. B.) by C. D. (and M. D., his wife), dated on that day, of certain real estate, situated in the (city) of —, in the county of — and State of New York, described as follows: (here insert brief description of property) (or, a copy of which conveyance is hereto annexed, marked schedule A, and referred to as a part of this petition). [That your petitioner has succeeded to the title to said property as the heir (or, grantee) of said A. B. (or, is the executor of the will) (or, the administrator of the goods, etc.), of said A. B. duly appointed; or, state other interest entitling the petitioner to make the application];¹ that G. H., who resides in the (city) of —, in the county of —, in the State of New York, is a witness to such conveyance; that such conveyance has not been acknowledged or proved, and that said

C. D., the grantee therein, has died, and that said conveyance cannot be proved without the evidence of said G. H.; that your petitioner has requested said G. H. to appear and testify touching the execution of said conveyance, before an officer authorized by the laws of this State to take such testimony, who called with your petitioner upon said G. H., but, that said G. H. has refused, and still refuses, to so appear and testify.

And your petitioner therefore prays, that a subpoena may be issued by your honor, pursuant to the statute in such case made and provided, requiring the said G. H. to appear and testify before you, touching the execution of such conveyance.²

Dated —, 1—.

M. F.

STATE OF (NEW YORK), } ss.
County of —,

M. F., of —, being duly sworn, says, that he is the petitioner named in the foregoing petition; that said petition is true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

(Jurat as in form No. 85.)

M. F.

1. Only the grantee or a person claiming under him can compel the subscribing witness to a conveyance to make proof of the instrument under this statute. (*Per* Porter, J., *Tuttle v. People*, 36 N. Y. 431, 435.)

2. The provisions of the statute are as follows: Upon the application of any grantee in any conveyance, his heirs or personal representatives, or of any person claiming under them, verified by the oath of the applicant, that any witness to the conveyance, residing in the county where such application is made, refuses to appear and testify touching the execution thereof, and that such conveyance cannot be proved without his evidence, any officer authorized to take the acknowledgment or

proof of conveyances, except a commissioner of deeds, may issue a subpoena requiring such witness to appear and testify before such officer, touching the execution of such conveyance. (1 R. S. 758, § 13; 7th ed., 2218.)

Every person who, being served with such subpoena, shall, without reasonable cause, refuse or neglect to appear, or appearing, shall refuse to answer upon oath touching the matters aforesaid, shall forfeit, to the party injured, \$100; and may also be committed to prison by the officer who issued such subpoena, there to remain without bail and without the liberties of the jail, until he shall submit to answer upon oath as aforesaid. (*Id.*, § 14.)

No. 97.

Subpœna requiring witness to conveyance to appear and testify, touching its execution.

(N. Y. R. S., part 2, chap. 3, §. 13.)

To G. H., of the (city) of —, in the county of — :

You are hereby summoned and required, in the name of the people of the State of New York, pursuant to statute, to be and appear before me at my office in the (city) of —, in said county, on the — day of —, 1—, at — o'clock in the — noon, to testify and give evidence touching the execution of a certain conveyance of real estate purporting to be executed by C. D. (and M. D., his wife) to A. B., to which, as appears by the application of (said A. B.), you are a subscribing witness. Whereof fail not at your peril.

Given under my hand, this — day of —, 1—.¹

J. N.,

County Judge of — county.

1. See note 2 to last form, No. 96.

No. 98.

Affidavit of service of subpœna, form No. 97.

(N. Y. R. S., part 2, chap. 3, §. 13.)

STATE OF (NEW YORK), } ss.:
County of —,

M. L., of —, being duly sworn, says, that on the — day of —, 1—, he personally served the annexed subpœna upon G. H., to whom it is directed, at the place of residence of said G. H., in the (city) of —, in the county of — (or, at the (city) of —, in the county of —), by exhibiting to said C. D. the said original subpœna, and delivering to him a copy thereof, and paying (or, tendering to) him his fees allowed by law for traveling from his (said) place of residence (or, from the place of service where he was temporarily residing) to and returning from the place where he is required to attend, and for one day's attendance pursuant to

said subpœna, namely, eight cents for each mile going to the place of attendance, and fifty cents for said attendance, in all amounting to the sum of — dollars.

(Jurat as in form No. 85.)

M. L.

1. See note 2 to form No. 96.

No. 99.

Warrant to arrest witness neglecting to attend pursuant to subpœna, form No. 97.

(N. Y. R. S., part 2, chap. 3, § 14.)

To the Sheriff of the County of — greeting:

Whereas, G. H., of the (city) of —, in your county, has been duly subpœnaed to appear before me and to testify and give evidence, touching the execution of a certain conveyance of real estate, executed by C. D. (and M. D., his wife) to A. B., to which conveyance said G. H. is a subscribing witness, as it appears to me, of record, and has neglected and refused to attend before me pursuant to said subpœna: Now, therefore, you are hereby commanded, in the name of the people of the State of New York, forthwith to apprehend and take into your custody the said G. H., and to bring him before me, J. N., county judge of said county, at my office in the city of —, in the county of —, to testify and give evidence touching the execution of said conveyance.

Given under my hand and seal at —, in said county, this — day of —, 1—.¹

J. N.,

[L. S.]

County Judge of — county.

1. See note 2 to form No. 96.

No. 100.

Commitment of witness, refusing to appear and testify, pursuant to subpœna, form No. 95.

(N. Y. R. S., part 2, chap. 3, § 14.)

The People of the State of New York, to any Constable of the County of —, greeting:

Whereas, G. H., who resides in the (city) of —, in said county, having been brought before me on a warrant to tes-

tify and give evidence, touching the execution of a certain conveyance of real estate, executed by C. D. (and M. D., his wife) to A. B., has, without reasonable cause, refused to answer upon oath, touching the matters aforesaid: You are hereby commanded to forthwith commit and deliver the said G. H. to the sheriff of the said county, who is required to receive the said G. H., and to commit and imprison him in the jail of said county, there to remain without bail and without the liberties of the jail, until he shall submit to answer upon oath as aforesaid.

Given under my hand and seal, at —, in said county, this — day of —, 1—.¹

[L. S.]

J. N.,

County Judge of — county.

1. See note 2 to form No. 96.

No. 101.

Certificate of acknowledgment in New York State, by a sheriff or other officer.

(N. Y. R. S., part 2, chap. 3, § 15.)

STATE OF (NEW YORK), } ss.:
County of —

On the — day of —, 1—, before me came M. F., the (sheriff of the county of —), known to me to be the person described in and who executed the (foregoing) conveyance (or, instrument), and acknowledged the execution thereof by him as such (sheriff).¹

J. K.

(Official title.)

1. See note 1 to form No. 89, as to proof and acknowledgment of deeds in New York State.

No. 102.

Certificate of acknowledgment by an administrator, executor, trustee or referee.

(N. Y. R. S., part 2, chap. 3, § 15.)

STATE OF (NEW YORK), } ss.:
County of —,

On this — day of —, 1—, before me came E. F., to me known to be the person described in and who executed

the within instrument, and acknowledged the execution thereof and that he executed the same as administrator of the goods, chattels and credits (or, as executor of the will of), I. J., late of the (town) of —, deceased (or, as trustee of W. F.), of the (town) of — (or, as referee therein mentioned).¹

J. K.
(Official title.)

1. See note 1 to form No. 89, as to acknowledgment and proof of deeds in New York State.

No. 103.

County clerk's certificate to be annexed to certificate of acknowledgment of instrument taken or to be used in another State than New York State, or read in evidence or recorded in a county of that State other than that in which the acknowledgment is taken.

(N. Y. R. S., part 2, chap. 3, § 18.)

STATE OF (NEW YORK),
(City and) County of —, } ss.:
Clerk's Office,

I, J. L., clerk of said (city and) county (and, also, clerk of the Supreme, County and — Courts, being courts of record held therein), do hereby certify that F. G., whose name is subscribed to the certificate of proof (or, acknowledgment) of the annexed instrument in writing and indorsed thereon, was, at the time of taking such proof or acknowledgment, a (commissioner of deeds), in and for the (city and) county aforesaid, dwelling in said (city), and duly authorized to take the same. And that I am well acquainted with the handwriting of the said (commissioner), and verily believe that the signature to the said certificate of proof (or, acknowledgment) is genuine; (and that the said instrument is executed and acknowledged according to the laws of the State of New York.)

In testimony whereof, I have hereunto set my hand, and affixed my official seal, as county clerk of said county, and clerk of said courts, this — day of —, 1—. ¹

[L. S.]

J. L.,
Clerk.

1. See section 18 of chapter 3 of part cited in note 1 to form No. 89, as 2 of the New York Revised Statutes, to this certificate, in case of acknowl-

edgment, etc., within the State. And chap. 100, p. 117, cited in same note, see, also, chap. 195 of Laws of 1848, as to form of same certificate when acknowledged, etc., is taken without the State.

No. 104.

Oath or affirmation to be administered to subscribing witness in New York State, proving conveyance.

(N. Y. R. S., part 2, chap. 3, § 12; N. Y. Code Civ. Proc., §§ 845-849.)

You do solemnly swear (in the presence of the ever living God) (or, you do solemnly, sincerely and truly declare and affirm), that you will true answers make to such questions as shall be put to you (*) touching the execution of the conveyance now shown to you.¹

(Or, you do solemnly swear that you will true answers make to such questions as shall be put to you touching the execution of the conveyance now shown to you, so help you God.)

1. The usual mode of administering an oath, now practiced, by the person who swears laying his hand upon and kissing the gospels, must be observed, where an oath is administered, except as otherwise specially prescribed in this article. (N. Y. Code Civ. Proc., § 845, art. 2 of title 1 of chap. 9, id.)

The oath must be administered in the following form, to a person who so desires, the laying of his hand upon and kissing of the gospels being omitted: "You do swear, in the presence of the ever living God." While so swearing he may or may not hold up his hand, at his option. (Id., § 846.)

A solemn declaration or affirmation, in the following form, must be administered to a person who declares that he has conscientious scruples

against taking an oath, or swearing in any form: "You do solemnly, sincerely, and truly, declare and affirm." (Id., § 847.)

If the court or officer, before which, or whom, a person is offered as a witness, is satisfied that any peculiar mode of swearing, in lieu of, or in addition to, laying the hand upon and kissing the gospels, is, in his opinion, more solemn and obligatory, the court or officer may, in its or his discretion, adopt that mode of swearing the witness. (Id., § 848.)

A person believing in a religion, other than the Christian, may be sworn according to the peculiar ceremonies, if any, of his religion, instead of as prescribed in section 845 or section 846 of this act. (Id., § 849.)

The court or officer may examine an infant, or a person apparently of

weak intellect, produced before it or him, as a witness, to ascertain his capacity, and the extent of his knowledge; and may require of a person, produced as a witness, what peculiar ceremonies in swearing he deems

most obligatory. Id., § 850; and see § 851, id.

See, also, § 9 of chap. 3 of part 2 of R. S. (1 R. S. 758; 7th ed., 2217), cited in note 1 to form No. 89.

No. 105.

Oath or affirmation to be administered in New York State to person identifying the parties or a witness to a conveyance.

(N. Y. R. S., part 2, chap. 3, § 9; N. Y. Code Civ. Proc., §§ 845-850.)

As in form No. 104, to (*), and from thence as follows: touching the identity of the parties (or, of the subscribing witness) to the conveyance now shown to you.¹

(Or, you do solemnly swear that you will true answers make to such questions as shall be put to you touching the identity of the parties (or, of the subscribing witness to the conveyance now shown to you.) So help you God.

1. See note 1 to last form, No. S. 757; 7th ed., 2217, and note 1 to form No. 89.
104. For section 9 of part 2 of chap. 3, N. Y. Revised Statutes, see 1 R.

No. 106.

Form of affirmation or oath to be administered to an affiant or affiants.

(N. Y. Code Civ. Proc., §§ 845-850.)

You (and each of you) do (severally) solemnly, sincerely and truly declare and affirm (or, you and each of you do severally solemnly swear in the presence of the ever-living God) that the contents of this affidavit, by you subscribed, are true.¹

(Or, you (and each of you) do (severally) solemnly swear that the contents of this affidavit, by you subscribed, are true. So help you God.)

1. See note to form No. 104.

No. 107.

Certificate of proof in New York State, of the execution of a conveyance, the subscribing witnesses to which are dead.

(N. Y. R. S., part 2, chap. 3, §§ 30-32.)

STATE OF (NEW YORK), }
County of —, } ss.:

I do hereby certify that on the — day of —, 1—, before me personally came A. B., to me known, and to whom the (foregoing) deed was by me at that time shown, and the said A. B., being by me duly sworn, did depose and say, that he resided in the (town) of —, in (said) county, and that he was well acquainted with C. D., the grantor named in said deed; that he had frequently seen him write, and knew his handwriting; that the name of the said grantor which is subscribed to the said deed, is in the handwriting of the said C. D.; and the said A. B. further deposed and said that he was also well acquainted with A. P., the subscribing witness to the said deed; that he had seen the said A. P. write frequently, and was well acquainted with his handwriting; that at the time of the date of said deed, the said A. P. resided in the (city) of —, in (said) county, and had been dead for about (two years); that his name subscribed as a witness to said deed was in the proper handwriting of the said A. P., deceased.

And I further certify that the fact proved, as aforesaid, by the said A. B., is to me satisfactory evidence of the death of A. P., the subscribing witness to said deed, and of the handwriting of said A. P., and of the handwriting of the said grantor.¹

J. K.
(Official title.)

1. See sections 30-32, 1 R. S. 761; 7th ed., 2221, cited in note 1 to form No. 89, relating to proof of conveyances, authorized by chapter 3 of part 2, R. S., to be recorded, where the witness to such conveyance shall be dead; and see that note generally as to acknowledgment and proof of conveyances in New York State.

No. 108.

Certificate of acknowledgment of conveyance of real estate situated in Ohio, by husband and wife.

(Rev. Stats. of Ohio, 1890, § 4106.)

STATE OF (OHIO), }
County of —, } ss.:

Be it remembered that on this — day of —, 1—, before me, the subscriber, a (insert officer's title), in and for said county, personally came A. B., and C. B., his wife, the grantors in the foregoing instrument, and acknowledged the signing thereof to be their voluntary act and deed for the uses and purposes therein mentioned. And the said C. B., wife of the said A. B., being examined by me separate and apart from her said husband, and the contents of said instrument being by me made known and explained to her as the statute directs, declared that she did voluntarily sign and acknowledge the same, and that she is still satisfied therewith as her act and deed.

In testimony whereof, I have hereunto set my hand and affixed my official seal, the day and year last above-written.¹

[OFFICIAL SEAL.]

(Signature and title.)

1. All deeds, mortgages or other instruments in writing, executed within the State of Ohio, by which any lands, tenements or hereditaments are conveyed or otherwise affected or incumbered in law, must be signed by the grantor, and such signing acknowledged in the presence of two witnesses, who shall attest the same, and subscribe their names to the attestation, and such signing must also be acknowledged by the grantor or maker before a judge of a court of record of that State, or a clerk thereof, a county auditor, a county surveyor, a justice of the peace, notary public, or the mayor or other presiding officer of a municipal corporation, who shall certify the acknowledgment on the same

sheet on which the instrument is written or printed. (Rev. Stats. of Ohio, 1890, § 4106.)

A deed, mortgage or lease, of any estate or interest of a married person, in real property, shall be signed, attested, acknowledged and certified in the manner prescribed in the preceding section. (Id., § 4107.)

The acknowledgment of an instrument for the conveyance or incumbrance of lands, situated within the State of Ohio, may be made without the State before a commissioner appointed by the governor of that State, for that purpose, or a consul of the United States, resident in any foreign country, and when executed and acknowledged, or proved in any other State, Territory, or

country, in conformity with its laws, By section 526, id., a probate judge or in conformity with the laws of in the State of Ohio, and by section Ohio, shall be as valid as if executed within the State of Ohio, in conformity with this chapter. (Id., § 4111.)

No. 109.

Certificate of acknowledgment by corporation of conveyance of real estate situated in Ohio.

(Rev. Stats. of Ohio, 1890, § 4106.)

STATE OF (OHIO), }
County of —, } ss.:

Be it remembered, that on this — day of —, 1—, personally appeared before me, the subscriber, a (officer's title), in and for said county, the P. Y. Z. Company, by its president, A. B., and acknowledged the signing and sealing with its corporate seal, of the foregoing instrument to be its voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof, etc. (same as in last form).¹

[SEAL.]

(Signature and title.)

1. See note 1 to form No. 108.

No. 110.

Certificate of acknowledgment by grantor of conveyance of property situated in Oklahoma.

(Statutes of Oklahoma, 1890, § 6714.)

TERRITORY (OR STATE) OF —, }
County of —, } ss.:

On this — day of —, in the year —, before me personally appeared —, known to me (or, proved to me on the oath of —), (*) to be the person who is described in, and who executed the within instrument, and acknowledged to me that he (or, they) executed the same.¹

[SEAL.]

A. B.

(Official title.)

1. An officer taking an acknowledgment of an instrument must indorse thereon, or attach thereto, a certificate substantially in the forms hereinafter prescribed:
First. Such certificate of acknowl-

edgment, unless it is otherwise in this article provided, must be substantially in the following form: (here is given form No. 110.)

Second. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form: (here is given form No. 111.)

Third. The certificate of acknowledgment by an attorney, in fact, must be substantially in the following form: (here is given form No. 112.)

Fourth. Officers taking and certifying acknowledgments or proof of instruments for record must authenticate their certificates by affixing thereto their signatures followed by the names of their offices; also their seals of office if, by the laws of the Territory, State, or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals, judges and clerks of courts of record must authenticate their certificates as aforesaid, by affixing thereto the seal of their proper court; and mayors of cities by the seal thereof.

Fifth. The certificate of proof or acknowledgment, if taken before a justice of the peace, when used in any county other than that in which he resides, must be accompanied by a certificate under the hand and seal of the clerk of the District Court of the county in which the justice resides, setting forth that such justice, at the time of taking such proof or acknowledgment, was authorized to take the same, and that the clerk is acquainted with his handwriting, and believes that the signature to the original certificate is genuine. (Stats. of Oklahoma, 1890, § 6714.)

The proof or acknowledgment of an instrument may be made in the

Territory of Oklahoma within the judicial district, county, sub-division, or city, for which the officer was elected or appointed before either, (1) a judge or clerk of a court of record; or (2) a mayor of a city; or (3) a register of deeds; or (4) a justice of the peace; or (5) a United States Circuit or District Court commissioner; or (6) a county clerk; or (7) a county auditor. (Id., § 6703.)

The proof or acknowledgment of an instrument may be made without the Territory, but within the United States, and within the jurisdiction of the officer, before either, (1) a justice, judge, or clerk of any court of record of the United States; or (2) a justice, judge, or clerk of any court of record of any State or Territory; or (3) a notary public; or (4) any other officer of the State or Territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment; or (5) a commissioner appointed for the purpose by the governor of Oklahoma. (Id., § 6704.)

Such proof or acknowledgment may be made without the United States before either, (1) a minister, commissioner, or charge d'affaires of the United States, resident and accredited to the country where it is made; (2) a consul, vice-consul, or consular agent of the United States, resident in the country where it is made; (3) a judge of a court of record of such country; (4) a notary public of such country.

When any of the above officers, mentioned in the article (4 of chapter 86) containing the above sections are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of his principal. (Id., § 6705.)

No. III.**Certificate of acknowledgment by corporation of conveyance of real property situated in Oklahoma.**

(Stats. of Oklahoma, 1890, § 6714.)

TERRITORY (OR, STATE) OF —, } ss.:
 County of —,

On this — day of —, in the year 1—, before me, A. B., a (here insert the name and quality of the officer), personally appeared —, known to me (or, proved to me on the oath of —) (*) to be the president (or, the secretary) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.¹

[SEAL.]

A. B.
 (Official title.)

1. See note 1 to form No. 110.

No. 112.**Certificate of acknowledgment of conveyance of real estate situated in Oklahoma, by an attorney in fact.**

(Stats. of Oklahoma, 1890, § 6714.)

As in last form No. 111, to (*) and from thence as follows: to be the person who is described in and whose name is subscribed to the within instrument as the attorney in fact of —, and acknowledged to me that he subscribed the name of — thereto as principal, and his own name as attorney in fact.¹

[SEAL.]

A. B.
 (Official title.)

1. See note 1 to form No. 110.

No. 113.**Certificate of acknowledgment of conveyance of real estate situated in Oregon, by one or more grantors.**

(Hill's Ann. Laws of Oregon, 1887, §§ 3002, 3011.)

STATE OF (OREGON), } ss.:
 County of —,

Before the undersigned (a justice of the peace) for the (precinct) of —, in the county and State aforesaid, person-

ally appeared on this — day of —, 1—, the within (or, above) named A. B. (*) (and C. B., his wife), to me known to be the individual (or, individuals) described in and who executed the within (or, above) conveyance (or, power of attorney, etc., as the case may be), and acknowledged to me that he (or, they) executed the same.¹

In testimony, etc. (as in form No. 29.)

E. F.,

[SEAL when required.]

(Justice of the Peace.)

1. Conveyances of lands, or of any estate or interest therein, may be by deed, signed and sealed by the person from whom the estate or interest is intended to pass being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded as directed in this title, without any other act or ceremony whatever. (Hill's Ann. Laws of Oregon, 1887, § 3002.)

Deeds executed within the State of Oregon, of lands, or any interest therein, shall be executed in the presence of two witnesses, who shall subscribe their names to the same as such, and the persons executing such deeds may acknowledge the execution thereof before any judge of the Supreme Court, county judge, justice of the peace, or notary public within the State, and the officer taking such acknowledgment shall indorse thereon a certificate of the acknowledgment thereof, and the true date of making the same under his hand. (Id., § 3011.)

If any deed shall be executed in any other State, Territory or district of the United States, such deed may be executed according to the laws of such State, Territory or district, and the execution thereof may be acknowledged before any judge of a court of record, justice of the peace or notary public, or other officer authorized by the laws of such State,

Territory or district to take the acknowledgment of deeds therein, or before any commissioner appointed by the governor of the State of Oregon for such purpose. (Id., § 3012.)

In the cases provided for in the last section, unless the acknowledgment be taken before a commissioner appointed by the governor of the State for that purpose, or before a notary public, or before the clerk of a court of record, certified under the seal of the court, such deed shall have attached thereto a certificate of the clerk or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is therein represented to be; that he believes the signature of such person subscribed thereto to be genuine, and that the deed is executed according to the laws of such State, Territory or district. (Id., § 3013, as amended by Laws of 1891, p. 96.) See *Knighton v. Smith* (1 Oreg. 276).

If such deed be executed in any foreign country, it may be executed according to the laws of such country, and the execution thereof may be acknowledged before any notary public therein, or before any minister plenipotentiary, minister extraor-

dinary, minister resident, charge des affaires, commissioner or consul of the United States, appointed to reside therein, which acknowledgment shall be certified thereon, by the officer taking the same, under his hand, and if taken before a notary public, his seal of office shall be affixed to such certificate. (Id., § 3014.)

No acknowledgment of any conveyance having been executed shall be taken by any officer unless he shall know or have satisfactory evidence that the person making the acknowledgment is the individual described in and who executed such conveyance. (Id., § 3017.) See *Kelsey v. Dunlap* (7 Cal. 160); *Cassell v. Cooke* (8 Serg & R. 268; S.C., 11 Am. Dec. 610).

Proof of the execution of any conveyance may be made before any officer authorized to take acknowledgments of deeds, and shall be made by a subscribing witness thereto,

who shall state his own place of residence, and that he knew the person described in and who executed such conveyance, and such proof shall not be taken unless the officer is personally acquainted with such subscribing witness, or has satisfactory evidence that he is the same person who was a subscribing witness to such instrument. (Id., § 3018.) See *McIntyre v. Kamm* (13 Or. 253).

All acknowledgments of married women to conveyances of real property in that State are to be taken in the same manner as if they were unmarried. (Laws of Oregon, 1891, p. 152, § 1.)

All defective acknowledgments of married women to conveyances of real estate in that State theretofore taken are legalized and made of full force and effect. (Id., § 2.)

All laws or parts of laws in conflict with the act last above cited are thereby repealed. (Id., § 3.)

No. 114.

Certificate of acknowledgment of conveyance of lands situated in Oregon, by attorney in fact of grantor.

(Hill's Ann. Laws of Oregon, §§ 3002, 3011.)

. As in form No. 113, to (*), and from thence as follows: (here insert the name of the principal in the conveyance) by his attorney in fact, the within (or, above) named C. D., to me known to be the individual described in and who executed the within (or, above) conveyance, for and on behalf of the said A. B. (insert the name of the principal), and acknowledged that he executed the same.¹

In testimony, etc. (as in form No. 115).

[SEAL, when required.]

(Signature, etc., as in form No. 113.)

1. See note 1 to form No. 113.

No. 115.

Certificate of acknowledgment, by husband and wife, of conveyance of real estate situated in Pennsylvania.

STATE OF (PENNSYLVANIA), } ss. :
County of —,

Before me, the subscriber, a (insert title of official), in and for said State and county, on the — day of —, 1—, personally came the above-named (here insert the names of the grantors), and acknowledged the foregoing indenture to be their act and deed to the end that the same might be recorded as such. She, the said (here insert the wife's name), being of full age, and by me separate and apart from her said husband duly examined, and the contents of the foregoing indenture made known to her, declared that she did voluntarily and of her own free will and accord, and without any coercion or compulsion on the part of her said husband, sign, seal, execute and deliver the same.

In witness whereof, I have hereunto set my hand and official seal, this — day of —, A. D., 1—.¹

[SEAL.]

(Signature and title.)

1. Conveyances of land situated in Pennsylvania should be by writing under seal, a scroll being a sufficient seal, and should be acknowledged before a proper officer.

Acknowledgments taken within the State may be taken before a justice of the Supreme Court, a judge of the Court of Common Pleas, a recorder of deeds, the city recorder of any city in which there is any such officer, an alderman, a justice of the peace, a notary public, or United States commissioner.

Acknowledgments taken out of the State may be taken before the mayor or other chief magistrate of a city or town, under the seal of said city or town, the judge of any court of record in any State or Territory of the United States, or of the United States courts,

justices of the peace, or any officer of any State or Territory of the United States authorized by the laws of such State or Territory to take acknowledgments, ambassadors, ministers, consuls and vice-consuls of the United States, any notary public, commissioners appointed for that purpose by the governor of the State.

When taken before any of the foregoing officers having a seal, and his seal being attached to his certificate, no certificate is necessary as to the official character of the officer.

When taken before any officer not having a seal, a certificate of the county clerk, or clerk of the proper court, is required as to his official character.

In order to bar the dower of a married woman she must join with

her husband in a conveyance, and any fear or compulsion of her husband, and the certificate must state separate and apart from her husband, the fact of such acknowledgment. and that she executed the deed of her own free will and accord, and without See Brightley's Purdon's Dig., tit. Deeds and Mortgages, §§ 19, etc.

No. 116.

Proof by officer of corporation of execution of conveyance of real estate situated in Pennsylvania, by corporation.

STATE OF (PENNSYLVANIA), }
County of —, } ss.:

Before me, the undersigned, a (here insert title of official), in and for said State and county, on this — day of —, 1—, personally came (here insert name and title of officer making the affidavit), who, being duly sworn, says, that he was personally present and saw the common and corporate seal of the above-named (here insert name of the corporation) affixed to the foregoing indenture; that the seal so affixed is the common and corporate seal of said corporation and was so affixed by authority of said corporation as the act and deed thereof; that the signatures of the president and secretary of said corporation are the genuine signatures of said president and secretary, and that they are the president and secretary of said corporation.¹

[SEAL.]

(Signature of deponent.)

Sworn to and subscribed before me, this — day of —, A. D., 1—. (Signature and title.)

1. See note 1 to form No. 116.

No. 117.

Certificate of acknowledgment of conveyance of real estate situated in Rhode Island, by grantors and their wives.

(Pub. Stats. of Rhode Island, tit. XXII, chap. 173, § 3. Id., tit. XX, chap. 166, § 8.)

UNITED STATES OF AMERICA, }
STATE OF (RHODE ISLAND), } ss.:

County of —,

In the town (or, city) of —, in said county and State, on this — day of —, A. D., 1—, J. D. personally ap-

peared before me and acknowledged the within instrument, by him signed, to be his free and voluntary act and deed.

[And at the same time and place E. D., wife of said J. D., being by me examined privately, separate and apart from her said husband, acknowledged and declared the same instrument by her signed and sealed, and by me then shown and explained to her, to be her voluntary act and deed, and that she did not wish to retract the same.¹]

A. B.

(Official character.)

1. No estate of inheritance or freehold, or for a term of not exceeding one year, in lands or tenements, shall be conveyed from one to another by deed, unless the same be in writing, signed, sealed and delivered by the party making the same, and acknowledged before a senator, judge, justice of the peace, mayor, notary public or town clerk, by the party or parties who shall have sealed or delivered it; and if the person conveying the same shall be without the State, in the military or naval service of the United States, the same may be acknowledged before any colonel, lieutenant-colonel, or major in the army, or before any officer of the navy not below the grade or rank of lieutenant-commander, and the deed shall be recorded or lodged to be recorded in the office of the town clerk of the town where the said lands lie, except in the case where the lands are in the city of Providence, in which case the deed must be recorded in the office of the recorder of deeds. (Pub. Stats. of Rhode Island, tit. XXII, chap. 173, § 3.)

All bargains and sales and other conveyances, whatsoever, of any lands, etc., for said terms or estates are declared void, unless they shall be acknowledged and recorded as aforesaid. Provided, that the same between the parties and their heirs

shall, nevertheless, be valid and binding. (Id., § 4.)

Every conveyance of lands within the State, or any instrument relating thereto, executed without the State, and within the United States, may be acknowledged before any judge, justice of the peace, mayor or notary public in the State where the same is executed, or before any commissioner appointed by the governor of Rhode Island and duly qualified thereunto; and if without the limits of the United States, before any ambassador; minister, charge des affaires, consul, vice-consul, or commercial agent of the United States, or before any commissioner, appointed and qualified as aforesaid in the country in which such deed or instrument is executed. (Id., § 9.)

Whenever a husband and wife, being of lawful age, are seized of any lands, tenements, or other real estate or any interest therein, in the right of the wife, they may convey the same by the same deed or by separate deeds, signed, sealed, delivered and acknowledged by them respectively. (Id., title XX, chap. 166, § 7.)

The wife acknowledging such deed or instrument shall be examined privily and apart from her husband, and shall declare to the officer taking such acknowledgment that the deed or instrument shown and explained

to her by such magistrate is her voluntary act, and that she does not wish to retract the same. (Id., § 8.)

Any person seized of an estate in fee-tail may convey the same in fee-simple, acknowledged before the Supreme Court or any Court of Common Pleas in the State of Rhode Island. (Id., title XXII, chap. 172, § 3.)

No. 118.

Certificate of acknowledgment of conveyance of real estate situated in Rhode Island, by attorney of grantor.

(Pub. Stats. of Rhode Island, tit. XXII, chap. 173, § 3.)

UNITED STATES OF AMERICA, }
 STATE OF (RHODE ISLAND), } ss.:
County of —,

J. D., by his attorney, R. R., appeared before me and acknowledged the within instrument, by him signed, to be his free and voluntary act and deed.¹

A. B.

(Official character.)

1. See note 1 to form No. 117.

No. 119.

Certificate of acknowledgment of execution of conveyance of real estate situated in Rhode Island, by officer of corporation.

(Pub. Stats. of Rhode Island, tit. XXII, chap. 173, § 3.)

UNITED STATES OF AMERICA, }
 STATE OF (—), } ss.:
County of —,

Then personally appeared before me, on the — day of —, 1—, at, etc., the above-named A. B., who signed and sealed the foregoing instrument as — of the — (here insert the name of the corporation), and acknowledged the same to be his free act and deed and the free act and deed of said (name of corporation).

Before me.¹

A. B.

(Official character.)

1. See note 1 to form No. 117.

No. 120.

Certificate of proof, by subscribing witness, of execution of conveyance of real estate situated in South Carolina.

(Rev. Stats. of South Carolina, 1882, § 1777.)

STATE OF (SOUTH CAROLINA), } ss.:
County of —,

I, F. G., a (judge, trial justice, or other officer, as the case may be), do hereby certify unto all whom it may concern, that on this — day of —, 1—, before me personally appeared E. F., with whom I am personally acquainted, and made oath that he saw the within-named C. D. sign, seal and deliver as his act and deed, the within conveyance for the uses and purposes therein mentioned; and that he (with A. M., in the presence of each other) subscribed his name as a witness of the due execution thereof.¹

E. F.

(Signature of witness.)

Sworn to before me, this — day of —, 1—.

[SEAL.]

F. G.

(Official title.)

1. Before any deed or instrument in writing can be recorded in the proper office within the State, the execution thereof shall first be proved by the affidavit in writing of a subscribing witness to such instrument, taken before some officer, within the State, competent to administer an oath, or before a commissioner or commissioners appointed by *dedimus* issued from the Court of Common Pleas of the county in which the instrument is to be recorded; or, if taken without the limits of the State, and within the United States, before a commissioner of deeds of the State of South Carolina, or before a clerk of a court of record, who shall certify the same under his official seal, or before a notary public, who shall affix thereto his official seal, accompanying the same with a certificate as to his official character, from a clerk of a court of record of the county in which the affidavit is taken; or, if taken without the United States, before a consul or vice-consul of the United States of America. When the affidavit of a subscribing witness cannot be had by reason of the death, insanity, or absence from the State of such witness, then upon proof of such fact, and of the handwriting of the parties who signed the instrument, and of the subscribing witnesses, by proper affidavit, the proof in every case to be recorded with the instrument. (Rev. Stats. of South Carolina, 1882, part 2, tit. 1, chap. 57, § 1777.)

When any *feme covert* shall relinquish her right of dower in any real estate, and acknowledge the same if she be within the State, in open court, or before any judge of the Court of Common Pleas, or justice of the Supreme Court, judge of Probate, clerk of the Court of Common Pleas, trial justice or notary public; or, if she be without the State, before a commissioner of deeds of the State of South Carolina, or before a commissioner appointed by *dedimus*, or before any consul or vice-consul of the United States, or a clerk of a court of record, or before a notary public, who must append to the certificate the official seal used by him; and, in the case of the certificate of a notary public, his official character must be attested by a clerk of a court of record of the county in which he may reside, and such acknowledgment shall be recorded, the same shall be effectual in law to convey and pass away the right of such *feme covert*, although she had not executed or acknowledged any deed of conveyance for that purpose. (Id., § 1797.)

The wife of any grantor conveying real estate, by deed of release, may, if she be of lawful age, release, renounce, and bar herself of her dower in all the premises so conveyed, by acknowledging as prescribed in the preceding section of this chapter, upon a private and separate examination, that she did freely and voluntarily, without any compulsion, dread or fear of any person whomsoever renounce and release her dower to the grantee, and his heirs and assigns, in the premises mentioned in such

deed, such renunciation to be recorded within forty days. When a husband dies intestate, and his widow accepts her distributive share in his estate, she shall be barred of her dower in the lands, of which her husband died seized, and of all such as he had aliened. (Id., § 1797.)

A certificate, under the hand of the woman, and the hand and seal of the officer or officers aforesaid, shall be indorsed upon such release, or a separate instrument of writing to the same effect, in the form, or to the purport hereafter following, and be recorded in the office of the register of mesne conveyances, in the county where the land lies (here is inserted form No. 121.) (Id., § 1798.)

The real and personal property of a married woman, whether held by her at the time of her marriage or accrued to her thereafter, either by gift, grant, inheritance, devise, purchase or otherwise, shall not be subject to levy and sale for her husband's debts, but shall be her separate property. (Id., § 2035.)

A married woman shall have power to bequeath, devise or convey her separate property in the same manner and to the same extent as if she were unmarried; and, dying intestate, her property shall descend in the same manner as the law provides for the descent of property of husbands; and all deeds, mortgages, and legal instruments of whatever kind, shall be executed by her in the same manner, and have the same legal force and effect, as if she were unmarried. (Id., § 2036.)

No. 121.

Certificate of acknowledgment of relinquishment, by married woman, of dower in real estate conveyed by husband in South Carolina.

(Rev. Stats. of South Carolina, 1882, § 1797.)

THE STATE OF (SOUTH CAROLINA), }
County of —, } ss.:

I, F. G., — (judge, trial justice, or other officer, as the case may be), do hereby certify unto all whom it may concern, that E. B., the wife of the within-named A. B., did this day appear before me, and upon being privately and separately examined by me, declared that she does freely, voluntarily and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within-named C. D., his heirs and assigns, all her interest and estate; and also all her right and claim of dower of, in or to, all and singular the premises within mentioned and released.¹

Given under my hand and seal, etc.

F. G.
(Official title.)

1. See note 1 to form No. 120.

No. 122.

Certificate of acknowledgment, by individual, of conveyance of lands situated in South Dakota.

(Civ. Code Dakota Terr., §§ 3277, '8, '9.)

Same as in form No. 21.¹

1. Acknowledgments of deeds, United States, before either a justice, judge or clerk of any court of record of the United States, or of any State or Territory, notary public, commissioner for South Dakota appointed by the governor of the State, or any other officer of the State or Territory where the acknowledgment is made, authorized by its

Out of the State and within the

law to take such proof or acknowledgment.

In foreign countries before a minister, commissioner, charge d'affaires of the United States resident and

accredited in the country where the acknowledgment is made, judge of a court of record of the country where the acknowledgment is made, or a notary public of such country.

No. 123.

Same certificate of acknowledgment by attorney in fact of grantor.

(Civ. Code Dakota Terr., §§ 3277, etc.)

Same as in form No. 22.

No. 124.

Same certificate of acknowledgment by officer of corporation.

(Civ. Code Dakota Terr., §§ 3277, etc.)

Same as in form No. 23.

No. 125.

Certificate of proof, by subscribing witness, to conveyance of land situated in South Dakota.

(Civ. Code Dakota Terr., §§ 3277, etc.)

Same as in form No. 24.

No. 126.

Certificate of proof by party to conveyance of land situated in South Dakota.

(Civ. Code Dakota Terr., §§ 3277, etc.)

Same as in form No. 25.

No. 127.

Certificate of acknowledgment of conveyance of real estate situated in Tennessee, before clerk of county court or his deputy.

(Code of Tennessee, 1884, § 2855.)

STATE OF (TENNESSEE), } ss.:
County of —, }

Personally appeared before me [clerk (or, deputy clerk) of the County Court of said county], the within-named bar-

gainer (insert name), with whom I am personally acquainted, and acknowledged that he executed the within instrument for the uses and purposes therein contained.

Witness my hand at office, this — day of —, 1—. ¹

[SEAL, when required.] (Signature and title.)

1. To authenticate an instrument for registration, its execution shall be acknowledged by the maker, or proved by two subscribing witnesses, at least. (Code of Tennessee, 1884, § 2850.)

If the person executing the instrument resides or is within the State, the acknowledgment shall be made before the clerk, or legally appointed deputy clerk of the County Court of some county in the State. (Id., § 2851.)

Notaries public of the several counties of the State, duly and regularly appointed, commissioned and qualified, are authorized and empowered to take acknowledgments of instruments required for registration, in the same manner and under the same rules and regulations as govern County Court clerks; and a notary public taking such acknowledgment shall certify the same under his official seal. (Id., § 2852.)

If the person executing the instrument resides or is beyond or without the limits of the State, but within the Union or its Territories, the acknowledgment may be made:

First. Before any court of record, or before the clerk of any court of record in any of the States of the Union; or, second, before a commissioner for Tennessee, appointed by the governor in any State or Territory of the Union; third, before a notary public of such State or Territory. (Id., § 2853.)

If the person executing the instrument resides or is beyond the limits of the Union and its Territories, the acknowledgment may be made:

First. Before a commissioner for Tennessee, appointed in the country where the acknowledgment is made.

Second. Before a notary public of such country.

Third. Before a consul, minister or ambassador of the United States in the country where the acknowledgment is made. (Id., § 2854.)

If the acknowledgment be made before a clerk or deputy clerk of the County Court of the State of Tennessee, he shall write upon or annex to the instrument the following certificate: (here is inserted form No. 127.) (Id., § 2855.)

If the acknowledgment be before a notary, commissioner of the State, or a consul, minister or ambassador, he shall make the certificate under his seal of office. (Id., § 2856.)

If it be made before a judge, he shall make the certificate under his hand, and thereupon the clerk of his court shall certify, under his seal of office, if there be a seal, or under his private seal, if there be none, as to the official character of the judge, or the official character of the judge may be certified by the governor of the State or Territory, under the great seal thereof. (Id., § 2857.)

If it be made before a court of record, a copy of the entry of the acknowledgment on the record shall be certified by the clerk under his seal of office, if there be a seal, or if there be none, under his private seal; and the judge, chief justice or presiding magistrate of the court shall certify as to the official character of the clerk. (Id., § 2858.)

If the acknowledgment or probate be before a clerk of some court of record of another State of the Union, and certified by him under his seal of office, the judge, chief justice, or presiding magistrate of the court shall certify to the official character of the clerk. (Id., § 2859.)

If the subscribing witnesses appear before the clerk or deputy clerk of the County Court of any county of the State, and prove the facts necessary to authenticate the instrument, the clerk shall thereupon write on the back or some other part of the instrument the following certificate: (here is inserted form No. 130.) (Id., § 2873.)

Every deed or other instrument of writing executed by husband and wife, and acknowledged or proved and registered in the manner herein-after prescribed, shall bind them, their heirs or assigns. The officer or court before whom the execution of such deed or instrument is acknowledged or proved shall examine the wife privately and apart from her husband, touching her voluntary execution of the same, and her knowledge of its contents and effect; and if she acknowledges or states that it is executed freely and voluntarily, and without any compulsion of her husband, and the clerk or other officer is satisfied that she fully understands the same, he shall, in addition to the certificate of probate or acknowledgment above prescribed, also put on the back of the deed, or annex to it, the following certificate: (here is inserted last clause of form No. 129.) (Id., § 2891.)

When the wife is unable, from age, sickness, or debility, or other cause, to appear before the clerk, he shall issue a commission to any justice of the peace, judge of any court of record, or mayor of a city or corporation, to take her privy examination, which commission shall be indorsed on the deed or attached to it, and shall be in the following form:

"STATE OF (TENNESSEE), } ss..
— County,

"To —, Esq.: You are hereby authorized and empowered to take the examination of —, privately and apart from her husband, relative to the free execution of the within (or, annexed) deed, and the same so taken, to certify under your hand and seal.

"Witness, —, clerk of the — court of —, at office, the — day of —, 1—." (Id., § 2892.)

And the commissioner shall indorse upon or attach to the deed the following certificate:

"STATE OF (TENNESSEE), } ss..
— County,

"—, wife of —, having personally appeared before me, and having by virtue of the authority in me vested, been examined privately and apart from her said husband, and she having acknowledged the due execution of the within (or, annexed) deed, by her freely, voluntarily, and understandingly, without compulsion or constraint by her said husband, and for the purposes therein expressed, the same is therefore certified.

"Witness my hand and seal this — day of —, 1—." (Id., § 2893.)

No. 128.

Certificate of acknowledgment of conveyance of real estate situated in Tennessee, before commissioner for Tennessee.

(Code of Tennessee, 1884, § 2855.)

STATE OF (—), } ss.:
County of —, }

Before me, A. B., a commissioner of the State of Tennessee, appointed, qualified and commissioned to take probate of deeds, etc., for registration and use in the State of Tennessee, personally appeared C. D., the within-named bargainor, with whom I am personally acquainted, and acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand and official seal, this — day of —, 1—.

[OFFICIAL SEAL.]

(Signature and title.)

1. See note 1 to form No. 127.

No. 129.

Certificate of acknowledgment, by husband and wife, of conveyance of real property situated in Tennessee.

(Code of Tennessee, 1884, § 2891.)

STATE OF (—), } ss.:
County of —, }

Before me, A. B., a (commissioner for the State of Tennessee, appointed, qualified and commissioned to take probate of deeds, etc., for registration and use in the State of Tennessee), personally appeared C. E. and D. E., his wife, the within-named bargainors, with whom I am personally acquainted, and acknowledged that they executed the annexed instrument for the purposes therein expressed, and D. E., wife of the said C. E., having personally appeared before me privately and apart from her husband, the said C. E., acknowledged the execution of the said instrument to have been done by her freely, voluntarily and understandingly,

without compulsion or restraint from her said husband, and for the purposes therein expressed.

Witness my hand and official seal, this — day of —,
 I —.¹
 [SEAL.] (Signature and title.)

1. See note 1 to form No. 127.

No. 130.

Certificate of proof of execution of conveyance of real estate situated in Tennessee, by subscribing witnesses.

(Code of Tennessee, 1884, § 2873.)

STATE OF (—), } ss.:
 County of —, }

Before me, A. B., a (commissioner of the State of Tennessee, appointed, qualified and commissioned to take probate of deeds, etc., for registration in the State of Tennessee), personally appeared E. F. and G. H., the subscribing witnesses to the within instrument, who, being first sworn, deposed and said that they are acquainted with C. D., the bargainor, and that he acknowledged the said instrument, in their presence, to be his act and deed, on the day it bears date (or, stating time as proved by witnesses).

Witness my hand and seal of office, this — day of —,
 I —.¹
 [OFFICIAL SEAL, when required.] (Signature and title.)

1. See note 1 to form No. 127

No. 131.

Certificate of acknowledgment of conveyance of real estate situated in the State of Texas, ordinary form.

(Rev. Stats. of Texas, 1879, art. 4312.)

STATE OF (TEXAS), } ss.:
 County of —, }

Before me (here insert name and character of officer), on this day personally appeared —, known to me (or, proved to me on the oath of —) to be the person whose name is subscribed to the foregoing instrument, and acknowledged

to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this — day of —, A. D., 1—.¹

[SEAL.]

(Signature and title.)

1. The acknowledgment or proof of an instrument of writing for record, may be made within the State, before either a clerk of the District Court, a judge or clerk of the County Court, or a notary public. (Rev. Stats. of Texas, 1879, art. 4305.)

Such acknowledgment or proof may be made without the State, but within the United States or their Territories, before either a clerk of some court of record having a seal, a commissioner of deeds duly appointed under the laws of the State of Texas, or a notary public. (Id., art. 4306.)

Such acknowledgment or proof may be made without the United States, before either a minister, commissioner or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made, or a notary public. (Id., art. 4307.)

The acknowledgment of an instrument in writing, for the purpose of being recorded, shall be by the grantor or person who executed the same, appearing before some officer authorized to take such acknowledgment, and stating that he had executed the same for the consideration and purposes therein stated; and the officer taking such acknowledgment shall make a certificate thereof, sign and seal the same with his seal of office. (Id., art. 4308.)

No acknowledgment of any instrument in writing shall be taken, unless the officer taking it knows, or has satisfactory evidence on the oath or affirmation of a credible witness,

which shall be noted in his certificate, that the person making such acknowledgment is the individual who executed and is described in the instrument. (Id., art. 4309.)

No acknowledgment of a married woman to any conveyance or other instrument, purporting to be executed by her, shall be taken unless she has had the same shown to her, and then and there fully explained by the officer taking the acknowledgment, on an examination privily and apart from her husband; nor shall he certify to the same, unless she thereupon acknowledges to such officer that the same is her act and deed, that she has willingly signed the same, and that she wishes not to retract it. (Id., art. 4310.)

Any officer taking the acknowledgment of a deed or other instrument in writing must place thereon his official certificate, signed by him and given under his seal of office, substantially in form as hereinafter prescribed. (Id., art. 4312.)

The form of an ordinary certificate of acknowledgment must be substantially as follows: (here is inserted form No. 131.) (Id., art. 4312.)

The certificate of acknowledgment of a married woman must be substantially in the following form: (here is inserted form No. 132.) (Id., art. 4313.)

The certificate of the officer, where the execution of the instrument is proved by a witness, must be substantially in the following form: (here is inserted form No. 133.) (Id., art. 4316.)

No. 132.

Certificate of acknowledgment, by married woman, of conveyance of real estate situated in Texas.

(Rev. Stats. of Texas, 1879, art. 4313.)

STATE OF (TEXAS), } ss.:
County of —, }

Before me (here insert name and character of officer), on this day personally appeared —, wife of —, known to me (or, proved to me on oath of —) to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said —, acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes therein expressed, and that she did not wish to retract it.¹

[SEAL.]

(Signature and title.)

1. See note 1 to form No. 131.

No. 133.

Certificate of proof, by subscribing witness, of conveyance of real property situated in Texas.

(Rev. Stats. of Texas, 1879, art. 4316.)

STATE OF (TEXAS), } ss.:
County of —, }

Before me (here insert name and character of officer), on this day personally appeared —, known to me (or, proved to me on the oath of —), to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me, stated on oath that he saw —, the grantor (or, the person who executed the foregoing instrument), subscribe the same (or, the grantor or person who executed such instrument of writing, acknowledged in his presence that he had executed the same for the

purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor (or, person who executed the same).

Given under my hand and seal of office, this — day of —, A. D., 1—.¹

[SEAL.]

(Signature and title.)

See note 1 to form No. 131.

No. 134.

Certificate of acknowledgment of conveyance of real estate situated in Utah Territory, by person known to officer.

(Comp. Laws of Utah, §§ 2626, 2629.)

TERRITORY OF (UTAH), } ss.:
County of —,

On this — day of —, A. D., one thousand eight hundred and —, personally appeared before me, A. B. (a notary public, judge, or other officer, as the case may be), in and for said county, C. D., personally known to me to be the person described in and who executed the foregoing instrument, who acknowledged to me that he executed the same, freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, etc.¹

(Signature and title.)

[SEAL, when required.]

1. Every conveyance in writing, whereby any real estate is conveyed or may be affected, shall be acknowledged, or proved and certified, in the manner hereinafter provided. (Comp. Laws of Utah, § 2624.)

Every officer who shall take the proof or acknowledgment of any conveyance affecting any real estate shall grant a certificate thereof, and cause such certificate to be indorsed or annexed to such conveyance. Such certificate shall be:

First. When granted by any judge or clerk, under the hand of such judge or clerk, and the seal of the court.

Second. When granted by an officer who has a seal of office, under the hand and official seal of such officer.

Third. When granted by a justice of the peace, then under his hand. (Id., § 2626.)

Such certificate shall be substantially in the following form, to-wit (here is inserted form No. 134). (Id., § 2629.)

When the grantor is unknown to the judge or other officer taking the acknowledgment, the certificate shall be in the following form, to-wit (here is inserted form No. 135). (Id., § 2630.)

If acknowledged or certified within the Territory of Utah, it must be before a judge or clerk of a court having a seal, or some notary public or county recorder, or before a justice of the peace of the county where the conveyance is executed and to be recorded. If acknowledged or proved without the Territory and within the United States, it must be before a judge or clerk of any court of the United States, or of any State or Territory having a seal, or before a notary public, or a commissioner of deeds for the Territory. If acknowledged or proved out of the United States, it must be before a judge or clerk of any court of any State, kingdom or empire having a seal, or be-

fore a notary public, or a minister, commissioner or consul of the United States, appointed to reside therein. (Comp. Laws of Utah, § 2625.)

When any of the officers above named are authorized to appoint a deputy, such acknowledgment or proof may be taken before such deputy acting in the name of his principal. (Id.)

A wife need not unite with her husband, nor a husband with his wife, in a deed or an acknowledgment. Neither has any legal interest in the property of the other, and a married woman may convey her property as if single. (Id., §§ 2528-2530.)

No. 135.

Certificate of acknowledgment of execution of conveyance of real estate situated in Utah Territory, by grantor unknown to officer.

(Comp. Laws of Utah, §§ 2626, 2630.)

TERRITORY OF (UTAH), } ss.:
County of ———,

On this ——— day of ———, A. D., one thousand eight hundred and ———, personally appeared before me, A. B. (a notary public, judge, or other officer, as the case may be), in and for said county, C. D., satisfactorily proved to me to be the person described in and who executed the within (or, annexed) conveyance by the oath of E. F., a competent and credible witness for that purpose, by me duly sworn, and he, the said C. D., acknowledged that he executed the same freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof, etc.¹

[SEAL, when required.]

(Signature and title.)

1. See note 1 to form No 134.

No. 136.

Certificate of proof, by subscribing witness, of execution of conveyance of real estate situated in Utah Territory.

(Comp. Laws of Utah, § 2634.)

TERRITORY OF (UTAH), } ss.:
County of —,

On this — day of —, A. D., one thousand eight hundred and —, before me, A. B. (a notary public, judge, or other officer, as the case may be), in and for said county personally appeared C. D., personally known to me (or, satisfactorily proved to me by the oath of E. F., a competent and credible witness for that purpose by me duly sworn) to be the same person whose name is subscribed to the annexed instrument as a witness thereto, who, being by me duly sworn, deposes and says that he resides in the county of —, and Territory (or, State) of —; that he was present and saw G. H., personally known to him to be the person described in and who executed the annexed instrument as a party thereto, sign, seal and deliver the same, and heard him acknowledge that he executed the same freely and voluntarily and for the uses and purposes therein mentioned, and that he, the deponent, thereupon signed his name as a subscribing witness thereto, at the request of the said G. H.

In witness whereof, etc.¹

[SEAL, when required.]

(Signature and title.)

1. See note 1 to form No. 134.

No. 137.

Certificate of acknowledgment of conveyance of real estate situated in Utah Territory, by officer of corporation.

(Comp. Laws of Utah, § 2626.)

TERRITORY OF (UTAH), } ss.:
County of —,

On this — day of —, in the year one thousand eight hundred and —, before me, A. B. (a notary public, or other officer, as the case may be), in and for the said county of —, personally appeared C. D., known to me to be the president

(or, other officer, as the case may be) of the (here name the corporation) the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same freely and voluntarily, and for the purposes therein mentioned.

In witness whereof, etc.¹

[SEAL, when required.]

(Signature and title.)

1. See note 1 to form No. 134.

No. 138.

Certificate of acknowledgment of execution of conveyance, by attorney in fact of grantor, of real estate situated in Utah Territory.

(Comp. Laws of Utah, § 2626.)

TERRITORY OF (UTAH), } ss.:
County of —, }

On this — day of —, one thousand eight hundred and —, before me, A. B. (a notary public, judge, or other officer, as the case may be), personally appeared C. D., personally known to me to be the same person whose name is subscribed to the within instrument as attorney in fact of E. F., and the said C. D. duly acknowledged to me that he subscribed the name of the said E. F. thereto as principal and his own as attorney in fact, and that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof, etc.¹

(Signature and title.)

1. See note 1 to form No. 134.

No. 139.

Certificate of acknowledgment of conveyance of real estate situated in Vermont, by grantor.

(Rev. Laws of Vermont, 1880, § 1927.)

STATE OF (—), } ss.:
County of —, }

At (stating place), on this — day of —, A. D., 1—, A. B. personally appeared and acknowledged this instrument,

by (him) sealed and subscribed, to be (his) free act and deed.¹

C. F.

Before me.

(Official title.)

1. Deeds and other conveyances of lands, or of an estate or interest therein, shall be signed and sealed by the party granting the same, and signed by two or more witnesses, and acknowledged by the grantor, before a justice, town clerk, notary public, master in chancery, county clerk, or judge or register of probate, and recorded at length in the clerk's office of the town in which such lands lie. Such acknowledgment before a notary public shall be valid without his official seal being affixed to the signature. (Rev. Laws of Vermont, 1880, § 1927.)

Deeds and other conveyances and powers of attorney for the conveyance of lands, the acknowledgment or proof of which is taken without the State, if certified agreeable to the laws of the State, province or kingdom in which such acknowledg-

ment or proof is taken, shall be as valid as though the same were taken before a proper officer or court in the State of Vermont; and the proof of the same may be taken, and the same acknowledged with like effect, before a justice of the peace, magistrate or notary public, within the United States, or in a foreign country, or before a commissioner appointed for that purpose by the governor of Vermont, or before a minister, charge d'affaires, consul or vice-consul of the United States in a foreign country. (Id., § 1946.)

A husband and wife may, by their joint deed, convey the real estate of the wife as she might do by her separate deed, if unmarried; but the wife shall not be bound by a covenant contained in such joint deed. (Id., § 1923.)

No. 140.

Certificate of acknowledgment of conveyance of real estate situated in Virginia.

(Code of Virginia, 1887, § 2501.)

STATE OF VIRGINIA, *County (or corporation) of* —, to-wit:

I, —, clerk of — court (or, a justice of the peace, or commissioner in chancery of the — court, or notary public), for the county (or, corporation) aforesaid in the State (or, Territory or district of —, or, I, —, a commissioner appointed by the governor of Virginia for said State (or, Territory or district)), do certify that E. F. (or, E. F. and G. H., etc.), whose name (or, names) is (or, are) signed to the writing above (or, hereunto annexed), bear-

ing date on the day of —, 1—, has or have acknowledged the same before me, in my county (or, corporation) aforesaid.

Given under my hand, this — day of —.¹

(Official signature.)

1. Except where it is otherwise provided, the court of any county or corporation (other than the city of Richmond) in which any writing is to be or may be recorded, and the Chancery Court of the city of Richmond, when any such writing is to be or may be recorded in the said city, or the clerk of any such court, in his office, shall admit to record any such writing, as to any person whose name is signed thereto, when it shall have been acknowledged by him or proved by two witnesses as to him in such court, or before such clerk in his office. (Code of Virginia, 1887, § 2500.)

Such court or clerk shall also admit any such writing to record, as to any person whose name is signed thereto, upon a certificate of his acknowledgment before the said clerk, or a justice, a commissioner in chancery of a court of record, or a notary, within the United States, written on or annexed to the same, to the following effect, to-wit:

"County (or, corporation) of —, to-wit:

"I, —, clerk of — court (or, a justice of the peace or commissioner in chancery of the — court, or notary public) for the county (or, corporation) aforesaid in the State or Territory (or, district) of —, do certify that E. F. (or, E. F. and G. H., etc.), whose name (or, names) is (or, are) signed to the writing above (or, hereto annexed), bearing date on the — day of —, has (or, have) acknowledged the same before me, in

my county (or, corporation) aforesaid.

"Given under my hand, this — day of —."

Or upon the certificate of acknowledgment of such person before any commissioner appointed by the governor, within the United States, so written or annexed, to the following effect, to-wit:

"State (or, Territory or District) of —, to-wit:

"I, —, a commissioner appointed by the governor, within the United States, for the said State (or, Territory or district) of —, certify that E. F. (or, E. F. and G. H., etc.), whose name (or, names) is (or, are) signed to the writing above (or, hereto annexed), bearing date on the — day of —, has (or, have) acknowledged the same before me, in my State (or, Territory or district) aforesaid.

"Given under my hand, this — day of —, Anno Domini, —."

Or upon the certificate of the clerk of any County or Corporation Court in the State of Virginia, or of the clerk of any court out of that State, and within the United States, that the said writing was acknowledged by such person, or proved as to him by two witnesses before such clerk, or before the court of which he is a clerk, or upon certain certificate under the official seal of any minister plenipotentiary, charge d'affaires, consul-general, consul, vice-consul or commercial agent appointed by the government of the United States

to any foreign country; or of the proper officer of any court of such country, or of the mayor or chief magistrate of any city, town or corporation therein, that the said writing was acknowledged by such person, or proved as to him by two witnesses, before any person having such appointment, or before such court, mayor or chief magistrate. (Id., § 2501.)

A writing signed by husband and wife and acknowledged as above, purporting to convey property, and being admitted to record as to the husband as well as the wife, is sufficient to convey the wife's dower right, and any interest she may have in the property at the date of the writing, as effectually as if she were, at the said date, an unmarried woman. (Id., § 2502.)

No. 141.

Certificate of acknowledgment of conveyance of real estate situated in State of Washington.

(Hill's Ann. Stats. of Washington, 1891, Gen. Stats., § 1435.)

STATE OF (WASHINGTON), } ss.:
County of —, }

I (here give name and official title) do hereby certify that on this — day of —, 1—, personally appeared before me (name of grantor or mortgagor, and if acknowledged by wife, her name, and add "his wife"), to me known to be the individual (or, individuals) described in and who executed the within instrument, and acknowledged that he (she, or they) signed and sealed the same as (his, her or their) free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal, this — day of —, A. D., 1—.¹

[SEAL.]

(Signature of officer.)

1. Acknowledgments of deeds, mortgages and other instruments in writing may be taken in the State of Washington, before a judge of the Supreme Court, or the clerk thereof, or the deputy of such clerk, before a judge of the Superior Court in that State, or the clerk thereof, or the deputy of such clerk, or before a justice of the peace, or a county auditor, or the deputy of such auditor, or a qualified notary public. (Hill's Ann.

Stats. of Washington, 1891, Gen. Stats., § 1430.)

Deeds or conveyances of lands, or of any estate or interest therein, situated in the State of Washington, may be executed or acknowledged in any other State or Territory of the United States, in the form prescribed for executing and acknowledging deeds within the State of Washington, and the execution thereof may be acknowledged before any person au-

thorized to take acknowledgments of deeds, by the laws of the State or Territory wherein the acknowledgment is taken, or before any commissioner appointed by the governor of the State of Washington for such purpose. (Id., § 1431.)

In the cases provided for in the preceding section, unless the acknowledgment be taken by a commissioner appointed by the governor of the State of Washington for that purpose, or by the clerk of the court of record of said State or Territory, or by a notary public or other officer having a seal of office, then such deed shall have attached thereto a certificate of the clerk of the court of record under the seal of said county or district, or a certificate of any other proper certifying officer of said district or county, within which said acknowledgment was taken, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he therein represents himself to be, that he is authorized by law to take acknowledgments of deeds, and that he verily believes the signature of the person subscribed thereto to be genuine. (Id., § 1432.)

Acknowledgments of all deeds, mortgages, and other instruments in writing that are required to be acknowledged by any law of the State of Washington, may be made and taken in any foreign country beyond the limits of the United States, before any minister plenipotentiary, secretary of legation, charge d'affaires, consul-general, consul, vice-consul, or commercial agent appointed by the government of the United States, or before the proper officer of any

court of said country, or before the mayor or other chief magistrate of any city, town, or other municipal corporation therein. (Id., § 1434.)

The person or officer taking such acknowledgment shall certify the same by a certificate written on or annexed to said mortgage, deed or instrument, which certificate shall be under his official seal, if any he has, and such certificate shall recite in substance that the deed, mortgage, or instrument was acknowledged by the person or persons whose name or names are signed thereto, as grantor or principal, before him as such officer, with the date of such acknowledgment. (Id., § 1435.)

A certificate of acknowledgment, substantially in the following form; shall be sufficient: (here is given form No. 141). (Id., § 1437.)

By section 1427, id., the use of private seals upon all deeds, mortgages, leases, bonds, and other instruments, and contracts in writing is abolished, and the addition of a private seal to any such instrument or contract in writing thereafter made shall not affect its validity or legality in any respect.

This section 1427 was passed a day later than section 1437 above referred to at the same session, in the form of acknowledgment prescribed by which the words "signed and sealed" are contained. (See note to § 1427 in above statutes.)

It is not necessary to take the acknowledgment of the wife separate and apart from her husband. In the case of a mortgage upon the homestead, she must sign and acknowledge such mortgage in order to render the same valid as against her.

No. 142.

Certificate of acknowledgment of conveyance of real estate situated in West Virginia.

(Code of West Virginia, 1891, chap. 73, § 2.)

STATE (TERRITORY OR DISTRICT) OF —, *county of* —, to-wit :

I (name of officer), a commissioner, appointed by the governor of the State of West Virginia, for the said State (or, Territory or district) of — ; or, I (name of officer), a justice (*) of the county aforesaid ; or, I (name of officer), recorder of said county ; or, I (name of officer), a notary of said county ; or, I (name of officer), a prothonotary or clerk of the — Court of said county, do certify that —, whose name (or, names) is (or, are) signed to the writing above (or, hereto annexed), bearing date on the — day of —, 1—, has (or, have) this day acknowledged the same before me, in my said —.(†)

Given under my hand, this — day of —, 1—.¹

[SEAL, when required.]

(Signature and title of officer.)

1. The clerk of the County Court of any county in which any deed, contract, power of attorney or other writing is to be or may be recorded, shall admit the same to record in his office, as to any person whose name is signed thereto, when it shall have been acknowledged by him or proved by two witnesses as to him, before such clerk of the County Court. (Code of W. Va., 1891, chap. 73, § 2.)

Such clerk shall also admit any writing to record as to any person whose name is signed thereto, upon the request of any person interested therein, upon a certificate of his acknowledgment before a justice, notary public, recorder, prothonotary or clerk of any court within the United States, or a commissioner appointed within the same by the governor of

the State of West Virginia, written or annexed to the same, to the following effect, to-wit: (here is inserted form No. 142).

Or upon a certificate so written or annexed, under the official seal of any minister plenipotentiary, charge d'affaires, consul-general, consul, deputy consul, vice-consul, consular agent, vice-consular agent, commercial agent or vice-commercial agent appointed by the government of the United States to any foreign country, or of the proper officer of any court of such country, or of the mayor or other chief magistrate of any city, town or corporation therein, that the said writing was acknowledged by such person, or proved as to him by two witnesses, before any person having such appointment, or before such

court, mayor or chief magistrate. If the acknowledgment be before a notary without the State, he shall certify the same under his official seal. (Id., § 3.)

When a husband and wife have signed a writing purporting to convey real estate, the wife may acknowledge the same together with or separately from her husband. If both acknowledge said writing at the same time, the certificate of such acknowledgment shall be in form or effect as follows: (here is inserted form No. 143).

If a wife acknowledge a deed or other writing separately from her husband, the certificate of her acknowledgment after the (*) in the foregoing form, shall be in the form or effect as follows: (here is inserted form No. 143).

If the acknowledgment be before a notary without the State of West Virginia, he shall certify the same under his official seal. (Id., § 4.)

The certificate of acknowledgment of a corporation or joint-stock association may be in form or effect as prescribed in the next preceding section down to the (*), and then as follows: (here is inserted form No. 144). (Id., § 5.)

If the deed is executed by a married woman, who, at the time of its execution and acknowledgment, is living

separate and apart from her husband, or whose husband is *non compos mentis*, and such deed be for real estate which is her sole and separate property, such facts shall be recited in the deed; and if her husband has not joined therein, no person authorized by the provisions of section 4 of this chapter to take such acknowledgment shall take and certify the same, until it is proved to his satisfaction that such real estate is the sole and separate property of such married woman, and that she was and is living separate and apart from her husband, or that her husband is *non compos mentis* at the date of such deed, and the acknowledgment thereof; and it shall be stated in the certificate of such acknowledgment that all of such facts were shown to the satisfaction of the person taking the same. The certificate as to such facts may be in form or effect as follows: (here is inserted last clause in form No. 143).

Such certificate shall, in all cases, when the validity of such deed comes in question, be *prima facie* evidence of the facts therein stated. If any person shall willfully make any false certificate contrary to the true facts of the case, he shall be guilty of a misdemeanor, and, upon conviction thereof, be fined and imprisoned at the discretion of the court. (Id., § 6.)

No. 143.

Certificate of acknowledgment by husband and wife, or by wife, of conveyance of real estate situated in West Virginia.

(Code of West Virginia, 1891, chap. 73, § 3.)

As in form No. 142, to (*), and from thence as follows: of the peace of said county of —; or, I (name of officer), a notary of the said county of —; or, I (name of officer),

a prothonotary (or, clerk) of the — Court (or, county) of —; or, other officer or person authorized to take acknowledgments by section 3 of this chapter, as the case may be (†), do certify that — and —, his wife (or, that —, the wife of —), whose name (or, names) is (or, are) signed to the writing above (or, hereto annexed), bearing date the — day of —, 1—, have (or, has) this day acknowledged the same before me in my said — (and I further certify that before taking such acknowledgment, it was proved to my satisfaction that the real estate in said writing mentioned was the sole and separate property of said —, and that she was at the date of such writing, and now is, living separate and apart from her husband (or, that her husband is *non compos mentis*).

Given under my hand, this — day of —, 1—.¹

[SEAL, when required.]

(Signature and title of officer.)

1. See note 1, to form No. 142.

No. 144.

Certificate of acknowledgment, by corporation or joint-stock association, of conveyance of real estate situated in West Virginia.

(Code of West Virginia, 1891, chap. 73, § 5.)

As in form No. 142, to (*) and from thence as follows: do certify that — personally appeared before me in my said —, and being by me duly sworn (or, affirmed), did depose and say, that he is the president (or, other officer or agent) of the corporation (or, association) described in the writing above (or, hereto annexed), bearing date the — day of —, 1—, authorized by said corporation (or, association) to execute and acknowledge deeds and other writings of said corporation (or, association), and that the seal affixed to said writing is the corporate seal of said corporation (or, the seal of said association as the case may be), and that said writing was signed and sealed by him in behalf of said corporation (or, association) by its authority

duly given. And the said — acknowledged the said writing to be the act and deed of said corporation (or, association).¹

[SEAL, when required.] (Signature and title of officer taking acknowledgment.)

1. See note 1, to form No. 142. "said corporation (or, association) has no seal." And in such case omit the word "sealed" after the words "signed and," and insert, in lieu of it, the word "executed." (Code W. Va., 1891, chap. 73, § 5.)

No. 145.

Certificate of acknowledgment of conveyance of real estate situated in Wisconsin, by grantor.

(Ann. Stats. of Wisconsin, § 2217.)

STATE OF (WISCONSIN), } ss..
— county,

Personally came before me, this — day of —, 1—, the above (or, within) named A. B. and C. B., his wife (or, if an officer, adding the name of his office), to me known to be the person (or persons) who executed the foregoing (or, within) instrument, and acknowledged the same.¹

E. F.,

(Insert designation of officer.)

1. Conveyances of land, or of any estate or interest therein, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved as directed in this chapter, without any other act or ceremony whatever; but no mortgage or other alienation by a married man of his homestead, exempt by law from execution, shall be valid, or of any effect as to such homestead, without the signature of his wife to the same. (Ann. Stats. of Wisconsin, § 2203.)

The persons executing conveyances within the State of Wisconsin, of

lands, or any interest therein, may acknowledge the execution thereof before any judge or clerk of a court of record, court commissioner, county clerk, register of deeds, notary public, or justice of the peace. The officer taking such acknowledgment shall indorse thereon a certificate of the acknowledgment thereof, and the true date of making the same, under his hand. (Ann. Stats. of Wisconsin, § 2216.)

Or such acknowledgment may be made before a United States court commissioner, if a certificate of his appointment be filed with the clerk of the Circuit Court of his county. (Id., § 2216a.)

A scroll or device answers the purpose of a seal. (Id., § 2215.)

Such certificate of acknowledgment shall be sufficient if made substantially in the following form: (here is inserted form No. 145.) (Id., § 2217.)

If such conveyance shall be executed in any other State, Territory, or district of the United States, it may be executed in the manner and acknowledged in the form prescribed in the next preceding section, or according to the laws of such State, Territory or district, and the execution thereof may be acknowledged before any judge or clerk of a court of record, notary public, justice of the peace, master in chancery, or other officer authorized by the laws of such State, Territory or district, to take acknowledgments of deeds therein, or before any commissioner appointed by the governor of the State of Wisconsin for such purpose; and, if executed within the jurisdiction of any military post of the United States not within the State of Wisconsin, it may be acknowledged before the commanding officer thereof. (Id., § 2218.)

In the cases provided for in the next preceding section, unless the acknowledgment be taken before a commissioner appointed by the governor of the State of Wisconsin for that purpose, a clerk of a court of record, with its seal attached, or the commanding officer of a military post, such conveyance shall have attached thereto a certificate of the clerk, or other proper certifying officer of a court of record of the county or district within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was, at the date thereof, such officer as he is

therein represented to be, and that he believes the signature of such person subscribed thereto to be genuine, and if such deed be executed and acknowledged according to the laws of such State, Territory or district, such certificate shall state that fact. If any such deed, the acknowledgment of which shall be taken by any such commissioner, clerk of a court of record, notary public, or commanding officer of a military post, shall be executed and acknowledged according to the laws of such State, Territory or district, the certificate of acknowledgment shall certify that fact. (Id., § 2219.)

If any such conveyance be executed in any foreign country, it may be executed in the manner and acknowledged in the form prescribed in sections 2216 and 2217, or according to the laws of such country, and the execution thereof may be acknowledged before any notary public, or other officer authorized by the laws of such country to take the acknowledgment of deeds therein, or before any minister plenipotentiary, minister extraordinary, minister resident, charge d'affaires, commissioner or consul of the United States, appointed to reside therein; such acknowledgment shall be certified by the officer taking the same, under his hand, and if taken before a notary public, his seal of office shall be affixed thereto; and if such conveyance be executed and acknowledged according to the laws of such country, the certificate of acknowledgment shall certify that fact. (Id., § 2220.)

A married woman of full age may convey her lands or release her dower in the same manner and with like effect, and by deed acknowledged in the same manner as if she were unmarried. (Id., § 2221.)

No. 146.

Certificate of acknowledgment of conveyance of real estate situated in the State of Wyoming.

(Rev. Stats. of Wyoming, 1887, § 8.)

STATE OF (WYOMING), } ss.:
County of ———,

I, A. B., a (describe officer), in and for said county, in — aforesaid, do hereby certify that —, personally known to me as the person whose name — subscribed to the annexed instrument, appeared before me this day in person and acknowledged that — signed, sealed and delivered the said instrument of writing as — free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal, this — day of —, A. D.,
 1——.¹

(My commission as such notary (justice of the peace or commissioner of deeds) will expire on the — day of —,
 1——.)²

(Signature and title.)

1. Deeds, mortgages or conveyances of lands, or any interest in lands, executed within the (Territory) of Wyoming, shall be executed in the presence of one witness, who shall subscribe the same as such, and the person executing such deed, mortgage or conveyance shall acknowledge the execution thereof before any judge or clerk of a court of record, or before any court commissioner appointed under or by authority of the laws of the United States, or any county clerk, justice of the peace or notary public within the Territory, and the officer taking such acknowledgment shall indorse thereon a certificate of the acknowledgment thereof, and the true date of sealing the same, under his hand and seal of office, if there be one. (Rev. Stats. of Wyoming, 1887, § 8.)

All conveyances of real estate, and other instruments required by the laws of the Territory, may be acknowledged before the clerk of any court of record within the Territory and without the Territory. (Id., § 9.)

By an act, chapter 61 of the Laws of Wyoming, passed in 1890, section 11 of the Revised Statutes of Wyoming is amended and re-enacted as follows: "§ 11. Any deed, mortgage, conveyance, power of attorney or instrument in writing, requiring an acknowledgment, executed outside of that Territory, may be acknowledged before any officer authorized by law to take acknowledgments at the place where such acknowledgment is taken. Whenever the officer taking such acknowledgment has no seal, the certificate of such officer shall have attached

thereto the certificate of a clerk of a court of record, or a county clerk of the same place having a seal, certifying that the officer taking the acknowledgment is authorized to take the same, and that he believes that the signature appended to the acknowledgment is genuine. Each instrument of writing as aforesaid, executed and acknowledged as aforesaid, shall be as valid and have the same force and effect as if executed in Wyoming, according to the provisions of section 8." (Laws of Wyoming of 1890, chap. 61, § 1.)

Every notary public, justice of the peace and commissioner of deeds for Wyoming, who takes an acknowledgment of any written instrument to be recorded in any public office in Wyoming, shall add to his certificate the date when his commission expires. (Id., § 2.)

This act shall take effect and be in force from and after June 1, 1890. (Id., § 3.)

Any deed, mortgage or conveyance executed in any other State, Territory, district or country, which shall be executed according to the laws of the Territory of Wyoming, and acknowledged before a clerk of a court of record, county clerk or a commissioner appointed as aforesaid, shall have the same effect as if executed and acknowledged within that Territory. (Id., § 12.)

If any deeds, mortgages or conveyances of lands, or of any interest in lands, be executed in any foreign country, government or empire, such deed, mortgage or conveyance of land may be executed according to the laws of the Territory of Wyoming, and may be acknowledged before a consul-general, consul or vice-consul of the United States; and when so acknowledged, the officer

taking the acknowledgment shall certify the same over his hand and official seal, or the seal of the consulate to which he is attached, if there be any such seal; and in case he has no official seal, and there be no seal of his consulate, that fact shall be stated in the certificate; and no other or further authentication shall be required to entitle such instrument to record in the Territory of Wyoming. This section shall also apply to powers of attorney executed in any such foreign country, government, kingdom or empire. (Id., § 14.)

A certificate of the acknowledgment of any deed, mortgage or conveyance, or proof of the execution thereof, before a court of record or a justice of the peace, signed by the clerk of such court (or, by the justice) before whom the same was taken, as provided by this chapter, and in the cases where the same is necessary, the certificate required by section 11 shall entitle such deed, mortgage or conveyance, certificate or certificates aforesaid, to be recorded in the office of the register of deeds in the county where the land lies. (Id., § 15.)

A married woman may, by her deed or mortgage, convey her real estate in like manner as she might if she were an unmarried woman. (Id., § 2.)

When any married woman not residing in the Territory of Wyoming, shall join with her husband in any conveyance of real estate situated within the Territory of Wyoming, the conveyance shall have the same effect as if she were sole, and the acknowledgment or proof of the execution of such conveyance by her may be the same as if she were sole. (Id., § 13.)

A married woman may relinquish her right of dower in any of the real

estate of her husband, or in any real estate, by joining with her husband in a deed, mortgage or conveyance, power of attorney, release or other writing of or relating to the sale, conveyance or other disposition thereof. (Laws of Wyoming of 1888, chap. 75, § 1.) See, further, as to dower, *Id.*, §§ 2-9.

By section 21 of the act of admission of the State of Wyoming, approved July 10, 1890, it is provided that all laws in force made by the Territory of Wyoming at the time of its admission into the Union, until amended or repealed, shall be in force in said State, except as modified or changed by that act, or by the Constitution of the State.

Every owner or occupant of a homestead, as established herein,

may voluntarily sell, mortgage or otherwise dispose of or incur the same; provided, that every such sale, mortgage, disposal or incumbrance shall be absolutely void unless the wife of the owner or occupant of such homestead, if he have any, shall, separate and apart from her said husband, freely and voluntarily sign and acknowledge the instrument in writing, conveying, mortgaging, disposing of or incumbering such homestead, and the officer taking her acknowledgment shall fully apprise her of her right and the effect of signing and acknowledging such instrument. (Rev. Stats. of Wyoming, 1887, § 2784.)

2. See section 2 of chapter 61 of Laws of Wyoming of 1890, cited in last note.

CHAPTER IV.

Forms of Adoption of Minor Children.

- No. 147. Agreement of adoption of minor child, with consent of parents.
148. Consent of parties to the adoption of child.
149. Consent of parents to adoption of minor child, where they do not reside in the county.
150. Order of county judge, directing the adoption of minor child.

No. 147.**Agreement of adoption of minor child, with consent of parents.**

(Laws of New York, of 1873, chap. 830, § 8, as amended by chap. 485 of Laws of 1888.)

(Title of proceeding as in form No. 150.)

Whereas, A. B., being of full age and residing in the town of —, in the county of —, is desirous of adopting, pursuant to the statutes of this State in such case made and provided, M. P., the minor child of F. P. and C. P., of the age of (twelve) years and upwards; and whereas said A. B. has appeared before the undersigned, county judge of — county, on the — day of —, 1—, at the chambers of said judge in the city of —, and the (said child and) the other persons whose consent is necessary to such adoption having appeared with him before said judge at said time and place (excepting the said F. P. and C. P., who reside (or, are) in the county of —, and whose consent, duly executed, acknowledged and certified according to law, has been presented to said county judge, to be filed with this agreement) and the necessary consent having thereupon been signed :

Now, therefore, the said A. B. doth hereby agree, pursuant to said statutes, that the said M. P. shall be and is hereby

adopted by him, and shall be henceforth treated, in all respects, as his own lawful child should be treated.

In witness whereof the said A. B. has hereunto set his hand, and said county judge has hereunto set his hand this — day of —, 1—. ¹

A. B.

J. C.,

County Judge of — county.

1. Section 8 of chapter 830 of the Laws of New York of 1873, as amended by chapter 485 of Laws of 1888, requires that the person adopting a child, and the child adopted, and the other persons whose consent is necessary, shall appear before the county judge of the county in which the person adopting resides, and the necessary consent shall thereupon be signed, and an agreement be executed by the person adopting, to the effect that the child shall be adopted and treated, in all respects, as his own lawful child should be treated. But in case such parent shall not be or reside in said county, such consent may be signed, duly acknowledged and certified in the manner required for conveyances of real estate, to entitle them to be recorded in said county, and such consent shall be presented to such county judge, and filed with the said agreement;

and such parent shall not be required to appear before such county judge.

See as to parties whose consent is required to be given to the adoption, same chapter, sections 3-7 and 11, cited in note 1 to form No. 150.

As to the signature of the judge or of a judge of the Supreme Court to such agreement, and the filing thereof, or of a duplicate thereof, in the county clerk's office, see section 13 of said act, cited in note 1 to form No. 150.

For the other provisions of said chapter 830, see the sections cited in notes to forms Nos. 148, 149, 150.

For forms of consent, see forms Nos. 148 and 149; for form of order, see form No. 150.

See, also, *Matter of Larson* (31 Hun, 539; reversed, S. C., 96 N. Y. 382) construing the provisions of said section 8.

No. 148.

Consent of parties to the adoption of child.

(Laws of New York, of 1873, chap. 830, §§ 3-8.)

(Title of proceeding as in form No. 150.)

We, F. P. and C. P., the parents¹ (or, I, F. P., the father, or, I, C. P., the mother) the mother (or, father) being dead, etc.) of M. P., a minor child, M. B., the wife of A. B.,² and

said M. P.,³ do hereby consent, pursuant to statute, to the adoption of said M. P. by A. B. of the (town) of —.

Witness our hands, this — day of —, 1—.

In presence of J. C.

F. P.

C. P.

M. P.

M. B.

J. C.,

County Judge of — county (or Judge of the Supreme Court.)

(Acknowledgment or proof, as in form No. 89.)⁴

1. See section 5, cited in note 1 to form No. 150.

2. See section 3, cited in note 1 to form No. 150.

3. See section 4, cited in note 1 to form No. 150.

See, also, section 11 of chapter 830 of Laws of New York of 1873, cited in note 1 to form No. 150, as to consent in case of abandonment by parent.

As to signature of the judge, or of a judge of the Supreme Court, to such consent, and the filing and recording hereof, or of a duplicate thereof in

the county clerk's office, see section 13 of said act, cited in note 1 to form No. 150.

Under Laws of 1876, chapter 343, the "Home of the Friendless, in northern New York," may give the consent required by chapter 830 of Laws of 1873, in case of children under its care.

See, also, notes to forms Nos. 147, 149 and 150, generally as to this proceeding.

4. The acknowledgment or proof are not necessary under the statute, but may be made for convenience.

No. 149.

Consent of parents to adoption of minor child, when they do not reside in the county.

(Laws of New York, of 1873, chap. 830, § 8, as amended by chap. 485 of Laws of 1888.)

(Title of proceeding as in form No. 150.)

We, F. P. and C. P., the parents (or, I, F. P., the father, or, C. P., the mother, the mother (or, father) being dead, etc.), residing in the county of —, of M. P., a minor child, do hereby consent, pursuant, etc. (conclude as in form No. 148).¹

In presence of J. C. (Signatures, as in form No. 148.)

(Acknowledgment as in form No. 89.)

(Certificate of county clerk, as in form No. 103.)

1. See note to forms Nos. 147, 148, 150, and particularly section 8 of chapter 830 of Laws of New York of 1873, as amended by chapter 485 of

Laws of 1888, cited in note 1 to form No. 150, and also section 11, id., cited in same note.

No. 150

Order of county judge, directing the adoption of minor child.

(Laws of New York, of 1873, chap. 830, § 9.)

In the Matter of the Adoption }
 of M. P. by A. B. }

A. B., of the town of —, in the county of —, being of full age and desirous of adopting M. P., the minor child over (or, under) the age of twelve years, of F. P., and C. P., his wife; and the said A. B., and M. B., his wife, having appeared before me this day, and the necessary consent to said adoption having been signed by said M. P. and her said parents, and by said M. B., the wife of said A. B. (or, otherwise according to the requirements of the statute¹), and an agreement having been executed by said A. B., to the effect that the said child shall be adopted and treated, in all respects, as his own lawful child should be treated; and I having examined all the persons so appearing before me, as aforesaid, and being satisfied that the moral and temporal interests of the said M. P. will be promoted by the said adoption, for the following reasons (state them), I do hereby order and direct, pursuant to the statutes in such case provided, that the said M. P. shall be adopted by and from henceforth regarded and treated, in all respects, as the child of said A. B.

Dated at the city of —, in the county of —, this — day of —, 1 —

J. C.,

County Judge of — county.

1. The provisions of chapter 830 of Laws of New York, of 1873, on the subject of adoption, are in part as follows:

SECTION 1. Adoption, as provided for in this act, is the legal act whereby an adult person takes a minor into the relation of child, and thereby acquires the rights and incurs the responsibilities of parent in respect to such minor.

§ 2. Any minor child may be adopted by any adult, in the cases and subject to the rules prescribed in this act.

§ 3. A married man, not lawfully separated from his wife, cannot adopt a child without the consent of his wife; and a married woman, not lawfully separated from her husband, cannot adopt a child without the consent of her husband.

§ 4. The consent of a child, if over the age of twelve years, is necessary to its adoption.

§ 5. Except in the cases provided for in the next section, a legitimate child cannot be adopted without the consent of its parents, if living, or the survivor, if one is dead; nor an illegitimate child without the consent of its mother, if she is living.

§ 6. The consent provided for by the last section is not necessary from a father or mother deprived of civil rights, or adjudged guilty of adultery or cruelty, and who is, from either cause, divorced, or is adjudged to be an insane person or an habitual drunkard, or is judicially deprived of the custody of the child on account of cruelty or neglect.

§ 7. When the child to be adopted has neither father nor mother living, or whose consent, if living, is made unnecessary by the provisions of the last section, such consent must be given by an adult person having the lawful custody of the child.

§ 9. The judge shall examine all persons appearing before him pursuant to the last section (section 8 cited in note 1 to form No. 147), each separately; and if satisfied that the moral and temporal interests of the child will be promoted by the adoption, he shall make an order in which shall be set forth at length, the reasons for such order, directing that the child shall thenceforth be regarded and treated, in all respects, as the child of the person adopting.

§ 10. (As amended by chapter 703 of Laws of 1887.) A child, when adopted, shall take the name of the person adopting, and the two thenceforth shall sustain toward each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation,

including the right of inheritance, and the heirs and next of kin of the child so adopted shall be the same as if the said child was the legitimate child of the person so adopting, except that as respects the passing and limitation over of real and personal property, under and by deeds, conveyances, wills, devises and trusts, dependent upon the person adopting dying without heirs, said child adopted shall not be deemed to sustain the legal relation of child to the person so adopting, so as to defeat the rights of remainderman, and in case of the death of the person so adopted, the person so adopting as above provided shall, for the purpose of inheritance, sustain the relation of parent to the person so adopted.

§ 11. (As amended by chapter 58 of Laws of 1889.) Whenever a parent has abandoned or shall abandon an infant child, such parent shall be deemed to have forfeited all claim that he or she would otherwise have as to the custody of said child or otherwise, against any person who has taken, adopted and assumed the maintenance of such child; and in such case the person so adopting, taking and assuming the maintenance of such child may adopt it under the provisions of this act, with the same effect as if the consent of such parents had been obtained. In such case of abandonment, the county judge may make the order provided for in this act without the consent of such parent or parents.

§ 12. The parents of an adopted child, are from the time of the adoption, relieved from all parental duties toward, and of all responsibility for, the child so adopted, and have no right over it.

Section 13 of said act provides as follows: Nothing herein contained

shall prevent proof of the adoption of any child, heretofore made according to any method practiced in this State, from being received in evidence, nor such adoption from having the effect of an adoption hereunder; but no child shall hereafter be adopted except under the provisions of this act, nor shall any child that has been adopted be deprived of the rights of adoption, except upon a proceeding for that purpose, with the like sanction and consent as is required for an act of adoption under the eighth section hereof; and any agreement and consent in respect to such adoption, or abrogation thereof hereafter to be made, shall be in writing, signed by such county judge or a judge of the Supreme Court; and the same, or a duplicate thereof, shall be filed with the clerk of the county and recorded in the book of miscellaneous records, wherein the same shall be made, and a copy of the same, certified by such clerk, may be used in evidence in all legal proceedings; but nothing in this act contained in regard to such adopted child inheriting from the person adopting shall apply to any devise or trust now made or already created, nor shall this act in any manner change, alter or interfere with such will, devise or said trust or trusts, and as to any such will, devise or trust said adopted child shall not be deemed an heir so as to alter estates

or trusts, or devises in wills already made or trusts already created.

Chapter 830 of Laws of New York of 1873 only applies to such adoptions as take place after its passage. (*Hill v. Nye*, 17 Hun, 457.)

The provisions of section 13 of that act, "that nothing herein contained shall prevent proof of the adoption of any child heretofore made, according to any method practiced in this State, from being received in evidence, nor such adoption having the effect of an adoption hereunder," does not give to such former adoption the effect of one made under that act, but merely prevents those adoptions from being subtracted from. (*Id.*)

That act does not prevent the grandparents of a deceased person from sharing in the distribution of his property, as his next of kin, because of their having, previous to its enactment, given away the father of such deceased person, and permitted him to be adopted by a third party. (*Id.*)

Such act does not affect or modify the provisions of the act chapter 244 of 1849, incorporating the American Female Guardian Society. (*Matter of Larson*, 31 Hun, 539, rev'd on other grounds, S. C., 96 N. Y. 382.)

See, also, *People, ex rel. Burns, v. Bloedel* (4 N. Y. Supp. 110; S. C., 20 N. Y. State Rep'r, 161).

CHAPTER V.

Forms of Agreements.

- No. 151. A general release.
- 152. A release between partners on a settlement
- 153. A release of a trust.
- 154. A release of a legacy.
- 155. Receipt and release to executor, etc., on payment of a legacy.
- 156. Release from a legatee on coming of age.
- 157. Release to executor by devisee and legatee.
- 158. Release to a guardian.
- 159. Release by a mortgagee to a mortgagor of part of the mortgaged premises on payment of part of the money secured.
- 160. Release to joint debtor, compounding separately with creditor.
- 161. Release to partner compounding separately with creditor.
- 162. Agreement of indemnity to person becoming stockholder and director in corporation on request.
- 163. Agreement between shipwright and his workmen for building a new ship.
- 164. Agreement for freight of a ship.
- 165. Agreement to hold parts of ship to be built and pay proportions of its cost and outfit.
- 166. Bill of lading.
- 167. Agreement submitting controversies to arbitration, full form.
- 168. Agreement submitting controversies to arbitration, short general form.
- 169. Agreement submitting a particular controversy to arbitration.
- 170. Agreement for the sale and purchase of a freehold estate in lands.
- 171. An agreement for a lease.
- 172. An agreement for lodgings or part of a house.
- 173. An agreement respecting a party-wall.
- 174. An agreement respecting a party-wall, another form.
- 175. Agreement for building a house.
- 176. An agreement to erect a building or buildings, another form containing special provisions.
- 177. Agreement for purchase of coin, etc., at the seller's option.
- 178. Another form of contract for purchase or delivery of property at option of buyer or seller.
- 179. Agreement to change mortgage security.
- 180. Agreement to bear equal shares in the expense of a lawsuit.
- 181. Agreement for sale of manuscript and copyright of a book.
- 182. Articles of copartnership between two attorneys.

- No. 183.** Same between two tradesmen.
184. Agreement for dissolution of copartnership.
185. Same, indorsed on original articles.
186. Agreement continuing partnership indorsed on original articles.
187. Articles of agreement between a merchant and his clerk.
188. Memorandum on a sale of wheat.
189. Articles of marriage.
190. Same, another form.
191. Articles of separation between husband and wife.
192. Jointure in lieu of dower right.
193. Agreement between an executor and creditor to refer a disputed claim.
194. Agreement giving priority to a mortgage about to be executed over one previously executed.
195. Release of land from the lien of a judgment.
196. Release of dower.
197. Same, in consideration of an annuity given by a will.
198. A mutual general release.
199. A release of a proviso or condition.
200. An agreement between a mortgagee and mortgagor, to grant building and other leases.
201. Agreement giving the right to manufacture and sell a patented article, within certain territory.

No. 151.

A general release.

Know all men by these presents, that I, A. B., of, etc., in consideration of the sum of one dollar and other good and valuable considerations to me in hand paid, by B. C., of, etc., have remised, released and forever discharged, and by these presents do, for me, my heirs, executors and administrators, remise, release, and forever discharge said B. C., his heirs, executors and administrators, of and from all and all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, damages, judgments, executions, claims, and demands, whatsoever, in law or equity, which against the said ~~A. B.~~ I ever had, now have, or which I, my heirs, executors, or administrators hereafter can, shall or may have, for, upon or by reason of any matter, cause or thing whatsoever (or, for, upon or by reason of a certain bond, etc., dated,

etc., specifying particular claim to be released), from the beginning of the world to the day of the date of these presents.

In witness, etc., (as in form No. 30).

A. B. [L. S.]¹

Sealed and delivered in presence of

E. F.

(Certificate of acknowledgment or of proof by subscribing witness as in chapter 3, forms Nos. 6, etc.)

1. Notwithstanding the provision of 2 New York Rev. Stat. 406, § 77 (N. Y. Code Civ. Proc., § 840) allowing the presumption of a consideration for a sealed instrument to be rebutted, a release under seal, although for a nominal consideration, operates, as at common law, as a discharge of the debt. If, however, the consideration for the release was merely nominal, the moral obligation to pay the debt may remain, and form a sufficient consideration for a new promise. (*Stearns v. Tappen*, 5 Duer, 294; *Noble v. Kelly*, 40 N. Y. 415, 421.)

A general release executed by a contractor to a city and covering all demands for, upon or by reason of a certain contract, *held*, to include and bar a claim for damages founded on the delay on the part of the city in removing obstructions, whereby the contractor was prevented from proceeding with the performance of the contract. (*Phelan v. Mayor, etc.*, of New York, 119 N. Y. 86; S. C., 28 N. Y. State Rep. 683.)

A mutual general release between the parties to an apparently absolute deed does not estop the grantor from claiming that the deed was a mortgage; because while it might release the debt it is against the policy of the law to treat it as a release of the equity of redemption. (*Haas v. Nauert*, Buff. Super. Ct., 19 N. Y. State Rep. 472; S. C., 2 N. Y. Supp. 723.)

A release not under seal and without consideration to support it is void. (*Crawford v. Millsbaugh*, 13 Johns. 87.)

Equity will not compel a creditor to affix his seal to a release which he has signed without consideration; even upon averment that the omission was by mistake. (*Minturn v. Seymour*, 4 Johns. Ch. 497.)

A release of a principal debt releases, also, by operation of law, a security incident to it, *e. g.*, a mortgage. (*Jackson v. Stackhouse*, 1 Cow. 122.)

Where there are general words only, in a release, they are to be construed most strongly against the releasor; but where there is a particular recital and then general words follow, the general words are qualified by the particular recital. Thus, the release of a judgment particularly described, and also of all debts, demands, etc., releases only the judgment. (*Id.*)

In equity a general release will be confined in its operation to the demands which appear to have been intended by the parties notwithstanding general words. (*McIntyre v. Williamson*, 1 Edw. 34). See, also, *Van Brunt v. Van Brunt* (3 *id.* 14); *Hoes v. Van Hoesen* (1 Barb. Ch. 379; affirmed, 1 N. Y. 120); *Kirby v. Taylor* (6 Johns. Ch. 342); *Coulter v. Board of Education* (63 N. Y. 365); *Howlett v. Howlett* (56 Barb. 467).

A seal is not necessary to render a

release effectual, if the agreement to release is upon sufficient consideration. (*Farmers' Bank of Amsterdam v. Blair*, 44 Barb. 641; *Morehouse v. Second National Bank of Oswego*, 98 N. Y. 503, 510.)

The mere oath of a party who has executed a general release to another, that he did not know what it contained, or believed it to be a simple receipt for money paid in part satisfaction of a loan, will not be deemed sufficient to invalidate it, especially when there was no reasonable or plausible ground for such belief, and the party omitted to disclose his ignorance, or otherwise left the other party unaware of it. (*Schmidt v. Herfurth*, 5 Robt. 124.)

See, also, *Van Alstyne v. Van Alstyne* (28 N. Y. 375); *Stillwell v. Carpenter* (2 Abb. N. C. 238); S. C. (62

N. Y. 639); *Van Bokkelen v. Taylor* (id. 105, rev'g S. C., 2 Hun, 138); *Gould v. Cayuga Co. Nat. Bank* (56 How. Pr. 505); *Canaday v. Krum* (83 N. Y. 67); *Dambman v. Schulting* (85 id. 622); *Compton v. Elliott* (48 N. Y. Super. (16 J. & S.) 211); *Kibbe v. Bowen* (50 N. Y. Super. 422); *Zoebis v. Von Minden* (23 N. Y. Week. Dig. 387); *Same v. Same* (47 Hun, 213); *Dixon v. Brooklyn City and Newtown R. R. Co.* (100 N. Y. 170); *Beach v. Endress* (51 Barb. 570); *Newell v. Mayor, etc.* (61 Hun, 356); *Higginson v. Second Nat. Bank* (59 id. 583); *Kirchner v. New Home Sewing Machine Co.* (id. 186); *Kreuzen v. Forty-second Street, etc., Railroad Co.* (38 N. Y. State Rep. 461; *Lee v. Kendall* (56 Hun, 610), as to construction and effect of releases.

No. 152.

A release between partners on a settlement.

Whereas, sundry accounts, current and otherwise, and divers dealings in trade, have been subsisting and depending for many years last past between B. P. of, etc., and H. J., late of, etc., but now of, etc., which said accounts and dealings they, the said B. P. and H. J., have balanced and adjusted, by which balance it appears that nothing remains due from the one to the other; therefore to prevent any future disputes touching or concerning such accounts and dealings, and to ascertain and confirm such balance and adjustment, they, the said B. P. and H. J., have mutually agreed to give and execute reciprocal releases to each other: Now, know all men by these presents, that he, the said B. P. (or, H. J.), for the consideration aforesaid, and to prevent all future disputes, for himself, his executors and administrators, hath remised, released and forever quitclaimed, and by these presents doth remise, release and forever quitclaim unto the said H. J. (or, B. P.), his heirs, executors and administrators, all and all

manner of actions, etc. (continuing description as in last form, No. 151), whatsoever, both at law and in equity, which against the said H. J. (or, B. P.) his heirs, executors, and administrators, he, the said B. P. (or, H. J.), now hath or ever had, on account of their said mutual dealings, or for or by reason of any other cause, matter or thing whatsoever, from the beginning of the world to the day of the date of these presents.

In witness, etc. (as in form No. 30).¹

B. P. [L. S.]

Sealed and delivered in presence of
E. F.

(Certificate of acknowledgment or of proof by subscribing witness as in chap. 3, forms Nos. 6, etc.)

1. See note 1 to last form No. 151, as to construction and effect of release.

No. 153.

A release of a trust.

Know all men by these presents, that whereas in and by a certain indenture of (deed), bearing date on or about the — day of —, in the year 1—, and made or mentioned to be made between C. D. of, etc., of the one part, and we, A. B. of, etc., of the other part, the said C. D., for the consideration therein mentioned, did grant the following described property, to-wit: (describe property granted) in which indenture I, the said A. B., do hereby declare that my name was only used in trust for E. F., of —: Now, know ye, that I, the said A. B., in discharge of the trust in me reposed as aforesaid, and at the request of the said E. F., have remised, released, surrendered, assigned, transferred and set over, and by these presents do, for me, my executors and administrators, freely and absolutely remise, release, assign, transfer and set over unto the said E. F., his executors, administrators and assigns, all the estate, right, title, interest, benefit, trust, claim and demand whatsoever, which I, the said A. B., my executors or administrators can, shall or may have, or claim of, in and to the said premises, or of or to any sum or sums of money, or other matter or thing whatso-

ever, in the said indenture contained, mentioned and expressed; so that neither I, the said A. B., my executors or administrators, at any time hereafter, shall or will claim, challenge or demand any interest, property, benefit or other thing, in any manner whatsoever, by reason or means of the said indenture, or any covenant therein contained; but thereof and therefrom, and of and from all actions, suits and demands which I, the said A. B., my executors or administrators may have concerning the same, shall be forever debarred by these presents.

In witness, etc. (as in form No. 30).¹

A. B. [L. S.]

Sealed and delivered in presence of
G. H.

(Certificate of acknowledgment or of proof by subscribing witness, as in chapter 3, forms Nos. 6, etc.)

1. See note 1 to form No. 151, as to construction and effect of releases.

No. 154.

A release of a legacy.

Know all men by these presents, that whereas, A. B., of etc., by his last will and testament in writing, bearing date the — day of —, in the year 1—, did, among other legacies therein contained, give and bequeath unto me, C. D., of, etc., the (sum or) legacy of — dollars, [or of (naming specific bequest)], and of his said will made and constituted E. F. sole executor, as in and by said will may appear: Now, know ye, that I, the said C. D., do hereby confess and acknowledge, that I have had and received of and from the said E. F., the legacy or sum of — dollars, so as aforesaid given and bequeathed unto me by the said A. B., and, therefore, I do by these presents acquit, release and discharge the said E. F. of and from all legacies, dues, duties and demands whatsoever, which I, or my executors or administrators may have, claim, challenge or demand of or against the said E. F.,

his executors or administrators, by virtue of the said last will and testament of or out of the estate of the said A. B., deceased.¹

In witness, etc. (as in form No. 30).¹

C. D. [L. S.]

Sealed and delivered in presence of

I. J.

(Certificate of acknowledgment or of proof by subscribing witness, as in chap. 3, forms No. 6, etc.)

1. See as to construction and effect of releases, note 1 to form No. 151.

No. 155.

Receipt and release to executor, etc., on payment of a legacy, etc., another form.

I, E. F., of, etc., do hereby acknowledge the receipt on this — day of —, in the year 1—, from C. D. (executor of the will), of A. B., late of, etc., deceased, of (one thousand dollars) in full, of amount of legacy [or, of, etc. (specifying bequest)]¹ bequeathed to me by the will of A. B., late of, etc., deceased [or, of any share as residuary legatee (or, one of the residuary legatees) under the (said) will; or, of any share of the estate of said A. B., upon the distribution of said estate by said administrator, etc.]. And in consideration of said payment, and of the sum of one dollar to me in hand paid, I do hereby release the said (executor) and said estate from any and all further liability to me on account of said legacy and otherwise.

In witness whereof, I have, etc. (as in form No. 30).²

E. F. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment or proof as in chap. 3, forms No. 6, etc.)

1. Insert this clause in brackets in case of a specific legacy.

2. See note 1 to form No. 151, as to construction and effect of release.

No. 156.

Release from a legatee on coming of age.

Know all men by these presents, that whereas A. B., of etc., made his last will and testament in writing, bearing date the — day of —, 1—, and among other legacies therein contained, did give and bequeath unto me, C. D., his son, the annual sum of — dollars, to be paid to me quarterly, until I should attain the age of one and twenty years; and of his will constituted E. F. and G. H. joint executors, as in and by the said will may appear; and, whereas, the said E. F. and G. H. did jointly accept of the said executorship and trust, and I, the said C. D., have attained my said age of twenty-one years; and, whereas, the said E. F. and G. H. have made up an account with me, the said C. D., of all moneys received and paid by the said E. F. and G. H., and all transactions of the said executorship and trust; and have (not only) paid me, the said C. D., the balance of such accounts (but also delivered unto me all the writings and papers belonging to the estate of the said deceased A. B.). Now, know ye, that I, the said C. D., being fully satisfied in the premises, have remised, released and forever quitclaimed, and, by these presents, do remise, release and forever quitclaim unto the said E. F. and G. H., and each of them, their and each of their executors and administrators, all reckonings and accounts, sum and sums of money, by them had and received in pursuance of the said trust, or by any means, of their being executors to the said A. B., aforesaid; and also of and from all other reckonings, accounts and demands whatsoever, from the beginning of the world to the day of the date of these presents.

In witness, etc. (as in form No. 30.)¹

C. D. [L. S.]

Sealed and delivered in presence of

M. N.

(Certificate of acknowledgment, or of proof by subscribing witness, as in chapter 3, forms Nos. 6, etc.)

1. Generally as to construction and effect of releases, see note 1 to form No. 151.

No. 157.

Release to executor by devisee and legatee.

To all to whom these presents shall come, R. C., of, etc., and M., his wife (one of the daughters, devisees and legatees named in the last will and testament of J. K., late of, etc., deceased), send greeting :

Whereas, the said J. K., at the time of his death, being possessed of, interested in, or entitled to a considerable (real and) personal estate, did, on or about the — day of —, in the year 1—, make and duly publish his last will and testament, in writing, and thereby gave, devised and bequeathed unto his, the said testator's two daughters, the said M. C. and J. D., the wife of C. D., all his, the said testator's estate, both real and personal, to be equally divided between them, share and share alike ; and the said testator appointed T. E. executor of his said will (in trust to sell the salable part of his, the said testator's estate and effects, and to apply the same according to the directions in his said will, as by the said will, reference being thereunto had, may more fully and at large appear), by virtue of which will, he, the said T. E., possessed himself of so much of the personal estate of the said testator as could be received in trust as afore-said ; and whereas, the said T. E. has paid unto the said T. D. and J. D., his wife, their proportionable shares or interest in the said testator's estate and effects, and is willing and desirous to pay to the said R. C. and M., his wife, their proportionable share thereof, on being indemnified and released in such manner as hereinafter is mentioned ; and whereas, the said T. E. has received in cash, and by the sale of the salable part of the said testator's estate and effects the sum of — dollars ; and there are now several notes of hand and book debts still outstanding, which are due to the said testator's estate, which cannot be by him got in and received (notwithstanding he hath used his utmost endeavors so to do), and which he apprehends are desperate ; and on fair and just account now stated between the said T. E. and R. C., and M., his wife, and after all charges, expenses and disburse-

ments thereout allowed and deducted, there now remains due to the said R. C., and M., his wife, on the balance thereof, the sum of — dollars :

Now these presents witness, that for and in consideration of the said sum of — dollars, to the said R. C., and M., his wife, in hand well and truly paid by the said T. E., at or before the sealing and delivery of these presents, the receipt whereof, they, the said R. C., and M., his wife, do hereby respectively acknowledge, and thereof and of and from every part and parcel thereof, do and each of them doth acquit, release and discharge the said T. E., his executors and administrators, by these presents, being in full for their share of all the personal estate and effects of the said testator, come to the hands of the said T. E., they, the said R. C., and M., his wife, have, and each of them has, released, exonerated and discharged, and by these presents do, and each of them doth, release, exonerate and discharge the said T. E., his executors and administrators, of and from the trust so vested in him, in and by the will of the said J. K., as aforesaid.

And, also, of and from all sum and sums of money whatsoever, by him, the said T. E., received under or by virtue of the trust aforesaid, and also of and from all accounts, matters and things whatsoever, relating to the personal estate of the said testator, or otherwise touching or concerning the same. And these presents further witness, that for the considerations aforesaid, they, the said R. C., and M., his wife, have and each of them has remised, released and forever quitclaimed, and by these presents do, and each of them doth, remise, release and forever quitclaim unto the said T. E., his heirs, executors and administrators, all and all manner of action and actions, suit and suits, cause and causes of action and suits, both at law and in equity, or otherwise howsoever, which they, the said R. C., and M., his wife, or either of them, now have, or ever had, or which they, or either of them, their or any of their heirs, executors or administrators, at any time hereafter can, shall or may have, claim, challenge or demand against the said T. E., his executors or administrators, for or on account of his being executor or trustee under the will of the said testator, or acting in the disposition or inter-

meddling with the said personal estate, or otherwise howsoever, touching or concerning the same, from the beginning of the world to the day of the date of these presents.

And, lastly, he, the said R. C., for himself and for the said M., his wife, their executors and administrators, doth hereby covenant, promise and agree, to and with the said T. E., his executors and administrators, by these presents, that in case there shall at any time hereafter appear to be any just debts due from the estate, late of him the said J. K., to any person or persons whomsoever, that then and in such case, he, the said R. C., and M., his wife, or one of them, some or one of their executors or administrators, shall and will, well and truly pay, satisfy and discharge the same; and, also, shall and will, from time to time, and at all times hereafter well and sufficiently save harmless and keep indemnified the said T. E., his heirs, executors and administrators, and his and their and every of their lands and tenements, goods and chattels, as well of and from the payment of all and every the debts which are now due from the estate late of the said J. K., as aforesaid, as also of and from and against all actions, suits, costs, charges, damages and expenses whatsoever, which shall or may be brought or commenced against the said T. E., his executors or administrators, or which he, they, or any or either of them shall or may pay, bear, sustain, suffer, or be put unto for or by reason, or on account of the said T. E., acting as executor or trustee as aforesaid, under the will of the said J. K., or otherwise howsoever.

In witness, etc. (as in form No. 30).¹

R. C. [L. S.]

M. C. [L. S.]

Sealed and delivered in presence of

J. K.

(Certificate of acknowledgment by parties, or proof by subscribing witness as in chap. 3, forms Nos. 6, etc.)

1. As to construction and effect of releases, see note 1 to form No. 151.

No. 158.

Release to a guardian.

Know all men by these presents, that L. M., son and heir of I. M., deceased, hath remised, released and forever quit-claimed, and by these presents doth remise, release and forever quitclaim unto I. H., of, etc., his guardian, all and all manner of actions, suits, reckonings, accounts, debts, dues and demands whatsoever, which he, the said L. M., ever had, now has, or which he, his executors or administrators, at any time hereafter, can or may have, claim or demand against the said I. H., his executors or administrators, for, touching or concerning (the management and disposition of any of the lands, tenements or hereditaments of the said L. M. (situate at, etc.), or any part thereof, or of any personal property or estate of the said L. M., or for or by reason of any money, rents or other profits by him received out of the same, or any payments made thereof, during the minority of the said L. M., or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date hereof.

In witness, etc. (as in form No. 30).¹

L. M. [L. S.]

Sealed and delivered in presence of

E. F.

(Certificate of acknowledgment or proof as in chapter 3, forms Nos. 6, etc.)

1. See note 1 to form No. 151, as to construction and effect of releases

No. 159.

Release by a mortgagee to a mortgagor of part of the mortgaged premises, on payment of part of the money secured.

This indenture, made this — day of —, in the year 1—, between A. B., of, etc., party of the first part, and C. D., of, etc., party of the second part. Whereas, the said C. D. (and M. D., his wife), by his indenture of mortgage, bearing date the — day of —, in the year 1—, did for the consideration therein specified, and for securing the payment of the moneys therein mentioned, convey to the said A. B.,

certain lands situate at the (city) of —, in the county of — and State of —, and of which the lands hereinafter contained are part and parcel. And whereas the said C. D. hath, on the day of the date hereof, paid unto the said A. B. the sum of — dollars, part of the moneys so intended to be secured (and all interest, due and owing, for the whole principal money, so that there is due to the said A. B., upon the said security, the sum of — dollars, principal money, and no more). And whereas, the said A. B., at the desire and request of the said C. D., hath agreed to surrender and release to the said C. D., his heirs and assigns, the lands hereinafter described, and to accept and take the residue of the mortgaged land as his security for the sum remaining due as aforesaid, and the interest thereof. Now these presents witness, that the said A. B., in pursuance of the said agreement and in consideration of — dollars to him in hand paid, at and before the time of the ensembling and delivery of these presents by the said C. D., hath granted, released, assigned and made over, and by these presents doth grant, release, assign and make over to the said C. D., and to his heirs and assigns all the part of said mortgaged lands described and bounded as follows, that is to say, All, etc. (describe part released), with the hereditaments and appurtenances to the same belonging, and all the right, title and interest of the said A. B., of, in and to the same, to the intent that the lands aforesaid, and hereby conveyed, may be discharged from the said mortgage, so that the rest of the lands in the said mortgage specified may remain to the said A. B., as heretofore. To have and to hold the lands and premises hereby released and conveyed to the said C. D., his heirs and assigns, to his and their only use and behoof forever.

In witness, etc. (as in form No. 30).¹

A. B. [L. S.]

Sealed and delivered in presence of

E. F.

(Certificate of acknowledgment or proof as in chap. 3, forms Nos. 6, etc.)

1. The rule of charging different incumbrance, in the inverse order of parcels of land, subject to a common their alienation, is a mere rule of

equity, and as a release to a subsequent purchaser of one parcel of the land is not a technical discharge of the lands previously conveyed from the lien of the incumbrance, it is not an equitable release except in those cases where, upon the principles of natural justice and equity, it ought to operate thus against the releasor. (*Patty v. Pease*, 8 Paige, 277; *Kendall v. Woodruff*, 87 N. Y. 1.)

Where, therefore, the mortgagor sold the land in two parcels, and the last purchaser applied the whole purchase-money, which was the fair value of the land, toward the payment of the mortgage, and his parcel was released by the mortgagee, *held*, that the other parcel was not exonerated from the residue of the mortgage debt. (*Patty v. Pease*, *supra*.)

Where a mortgagee whose mortgage is a lien upon two parcels of land, subsequently conveyed by the mortgagor to different purchasers, releases the piece last conveyed from the lien of his mortgage, without any notice, either actual or constructive, that the other parcel has been previously sold by the mortgagor, he does not discharge the parcel last released. (*Id.*)

But if with full notice of the equitable rights of subsequent purchasers or incumbrancers as between themselves, he releases a part of the premises which is, in equity, primarily liable for the debt, he must deduct its value from his debt, and proceed only for the residue against the remaining parcels. (*Guion v. Knapp*, 6 Paige, 35; *Howard Ins. Co. v. Halsey*, 8 N. Y. 271, affg S. C., 4 Sandf. 565.)

The record of the subsequent deed is not notice to the mortgagor. (*Howard Ins. Co. v. Halsey*, *supra*.)

Nor is information obtained by a solicitor retained by the mortgagee to foreclose the mortgage such notice, because not acquired in reference to the same transaction. (*Id.*)

Where the release, in terms, refers to a conveyance in which the premises conveyed are referred to as the lands of the grantee, the reference is constructive notice of the fact, to the same extent as if the conveyance referred to had been recited in the release. (*Id.*)

The existence of the equity does not depend on the grantee being a purchaser for value. *So held* in favor of assignees for creditors. (*Id.*)

By an error of the county clerk in recording a release of a portion of mortgaged premises, the instrument, as recorded, released the part intended to be retained, and retained the part intended to be released. Thereafter the mortgagor gave a mortgage upon the part appearing by the record to be released, but in fact retained, to one F., who had notice of the prior mortgagee's rights. Subsequently, F. assigned his mortgage to one D., who had no notice of such rights. *Held*, that the plaintiff, the assignee of the first-mentioned mortgage, was not affected by the error of the clerk, or concluded by the record, and that as against D., who acquired no better title to the mortgage given to F. than his assignor had, the plaintiff's mortgage was entitled to priority. (*Simonson v. Faliker*, 25 Hun, 570.)

See, also, *Lynch v. Pfeiffer* (110 N. Y. 33); *Clements v. Griswold* (46 Hun, 377) upon this subject; and see note 1 to form No. 151, generally, as to construction and effect of releases.

No. 160.

Release to joint debtor compounding separately with creditor.

(N. Y. Code Civ. Pro., § 1942.)

Know all men by these presents, that whereas A. B. and C. D. are jointly indebted to the undersigned, E. F. upon (*) (describing claim); and whereas, the said A. B. has made a separate composition and settlement with the said E. F. of his liability upon said (claim): (†)

Now, therefore, in consideration of the sum of — dollars, to me in hand paid by said A. B., in full of the amount agreed to be paid by said A. B., upon said settlement, I do hereby, pursuant to section 1942 of the Code of Civil Procedure of the State of New York,¹ release and discharge the said A. B. from all and every liability to me upon said (claim), and the said A. B. is hereby exonerated therefrom.

This instrument is not to affect, in any way, the liability of the said C. D. to me, upon said (claim).

In witness, etc. (as in form No. 30.)²

E. F. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment or proof, as in chapter 3, forms Nos. 8, etc.).

1. It is necessary to refer to the statute. (*Bank of Poughkeepsie v. Ibbotson*, 5 Hill, 461; *Hoffman v. Dunlop*, 1 Barb. 185.)

2. Section 1942 of the Code of Civil Procedure of the State of New York provides that a joint debtor may make a separate composition with his creditor, as prescribed in that section. Such a composition discharges the debtor making it; and him only. The creditor must execute to the compounding debtor a release of the indebtedness, or other instrument exonerating him therefrom. A member of a partnership cannot thus compound for a partner-

ship debt, until the partnership has been dissolved by consent or otherwise. In that case the instrument must release or exonerate him from all liability, incurred by reason of his connection with the partnership. An instrument, specified in that section, does not impair the creditor's right of action against any other joint debtor, or his right to take any proceeding against the latter; unless an intent to release or exonerate him appears affirmatively upon the face thereof.

Section 1943, id., provides that an instrument, specified in the last section, is deemed a satisfaction-piece,

for the purpose of discharging, as prescribed in section 1260 of that act, the docket of a judgment, recovered upon an indebtedness released or discharged thereby, as far as the judgment affects the compounding debtor. Where the docket of a judgment is discharged thereupon, a special entry must be made upon the docket, to the effect, that the judgment is satisfied, as to the compounding debtor only; and section 1944, id., provides that where a joint debtor has thus compounded, a joint debtor who has not compounded may make

any defense or counter-claim, or have any other relief, as against the creditor, to which he would have been entitled, if the composition had not been made. He may require the compounding debtor to contribute his ratable proportion of the joint debt, or of the partnership debts, as the case may be, as if the latter had not been discharged.

See, also, *Hood v. Hayward* (124 N. Y. 1); *Harbeck v. Pupin* (123 id. 115); *Whittemore v. Judd Linseed, etc., Co.* (124 id. 565); *Harbeck v. Pupin* (23 Abb. N. C. 194, note).

No. 161.

Release to partner compounding separately with creditor.

(N. Y. Code Civ. Proc., § 1942.)

As in form No. 160, to (*) and from thence as follows :
A partnership indebtedness of the late firm of A. B. & Co., composed of said A. B. and C. D., which firm has now been dissolved by consent (or, state how otherwise) for (describe claim), and whereas the said A. B. has made a separate composition and settlement with the said E. F. of his said liability upon said (claim):

Now, therefore, in consideration of the sum of — dollars, to me in hand paid by said A. B., in full of the amount agreed to be paid by said A. B. upon said settlement, I do hereby, pursuant to section 1942 of the Code of Civil Procedure, release and discharge the said A. B. from all and every liability to me upon said (claim), and the said A. B. is hereby exonerated therefrom and from all liability thereupon incurred by reason of his connection with the said partnership.

This instrument is not, etc. (concluding as in form No. 160.)¹ E. F. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment or proof as in chapter 3, forms Nos. 89, etc.)

1. See note 1 to last form, No. 160, and note therein referred to.

No. 162.

Agreement of indemnity to person becoming stockholder and director in corporation on request.

Whereas, L. M., of the (city) of —, in the county of —, and State of —, has, at my request and for my benefit, and to enable the (name of corporation), a corporation duly organized under the laws of the (State) of (New York) to be incorporated, become a stockholder and director of said corporation ; and

Whereas, I have agreed with said L. M., in case of his becoming such stockholder and director, to indemnify and save him harmless from any and all liability as such stockholder and director, for the debts of the said corporation, or otherwise (except so far as the same may be incurred by reason of his default, negligence or misfeasance as such director) :

Now, therefore, in consideration of the premises, and of one dollar to me in hand paid by said L. M., I do hereby agree for myself and my executors, administrators and assigns, to indemnify and save harmless the said L. M. from any and all liability and indebtedness of every nature, which he, as such stockholder or director, has incurred, or may hereafter incur, for the indebtedness of said company, or otherwise, by reason of his being such stockholder or director, and from and against all damages, costs and charges which he has incurred, or shall hereafter owe or incur, by reason of his being such stockholder or director (excepting as to debts or liability incurred by him, by reason of his default, negligence or misfeasance as such director), (provided, however, that in case I or my executors, administrators or assigns, shall request said L. M. to resign as a director of said company, and in case he shall fail to resign as such director, within a reasonable time after such request has been made, then this guaranty shall be void so far as relates to any liability incurred by him as a director after the date of such request).¹

In witness, etc. (as in form No. 30).

In presence of

E. G.

J. C.

(Certificate of proof or acknowledgment, as in chapter 3, forms Nos. 6, etc.)

1. This clause in parentheses may be omitted or inserted, as may be deemed advisable.

No. 163.

Agreement between shipwright and his workmen for building a new ship.

This agreement, made between A. F., of —, and C. R., of, etc., and C. J., of, etc., of the one part, and I. E., of, etc., of the other part.

Whereas, the said I. E. has contracted with A. B., of, etc., for building the hull of a new ship of the dimensions contained in their articles of agreement, etc., etc.: Now these presents witness, that the said A. F., C. R. and C. J., for themselves, their executors, etc., do hereby covenant with the said I. E., his, etc., that they, the said A. F., C. R. and C. J., their, etc., for the considerations hereinafter mentioned, with materials to be provided by the said I. E., and at his charge, at his yard in — aforesaid, shall perform the shipwright's work and workmanship, according to the said recited articles of agreement, for the building of the hull of the said ship in a substantial and workmanlike manner, to the content of the said I. E., and as he or his assigns shall appoint from time to time; and will launch the said ship on or about the — day of —, next, and clear the launch wherein the said ship shall be built immediately after launching thereof. And the said I. E., for himself, etc., covenants with the said A. F., C. R. and C. J., their, etc., that he, the said I. E., his, etc., will pay to the said A. F., C. R. and C. J., their, etc., after the rate of — per ton for every ton of the said ship's burthen or tonnage (carpenter's or other measure, and time and manner of payment as the parties may agree), within — days after the launching the said ship.

In witness whereof, we, the said parties hereto, have hereunto set our hands and seals, this — day of —, 1—.

In presence of

D. L.

A. F. [L. S.]

C. R. [L. S.]

C. J. [L. S.]

I. E. [L. S.]

(Certificate of acknowledgment or proof, as in chapter 3, forms Nos. 6, etc.)

No. 164.

Agreement for freight of a ship.

Articles of agreement between M. N., master of the ship V., burthen about — tons, now at anchor, etc., and forthwith bound out on a voyage to N., of the one part, and F. G., of, etc., merchant, of the other part.

The said M. N., for the consideration hereunder mentioned, doth covenant with the said F. G., his, etc., that the ship aforesaid shall, with all expedition, be made ready and provided in all respects for the voyage aforesaid, and shall receive on board for the said F. G., the goods following, viz.: (enumerate same), and within — days after the date hereof, shall set sail directly to N.; and within — days after her arrival there, shall unload and deliver the same to the factors of the said F. G. (the dangers of the seas, enemies, and the restraints of princes and rulers only excepted); and the said F. G., for himself, etc., doth covenant with the said M. N., his, etc., that he, the said F. G., his, etc., shall lade, or tender the said goods to be laden, on board the said ship, and receive and discharge the same from on board the same at N., aforesaid, within the respective time above limited, and will pay unto the said M. N., his, etc., for freight thereof, at the rate of —, immediately after a right discharge and delivery of the same at N., aforesaid, with primage and average accustomed, and two-thirds of all port charges to grow due during the said voyage, the other third part thereof to be paid by the said M. N.

[And in case the factors of the said merchant at N. shall not, within — days after the arrival of the ship at said port, lade on board said ship any goods, and the said master shall not otherwise complete the said ship's tonnage there, then he, the said merchant, shall pay to the said master at his arrival at — the sum of — for dead freight, and which is to be in full of all other demands in respect of freight for the said voyage, by virtue of any covenant herein con-

tained, any thing hereinbefore contained to the contrary notwithstanding.]¹

Witness our hands at —, on this day of —, 1—.

M. N.

In presence of

F. G.

L. M.

1. This covenant to pay dead freight may be inserted if necessary in the above agreement.

No. 165.

Agreement to hold parts of ship to be built, and pay proportions of the prime cost and outfit.

We, who have hereunto set our hands, do agree with A. B. of —, severally, that each of us will hold the several parts by us hereunder respectively subscribed of a new ship, to be of the burthen of (five hundred) tons or thereabouts, for the building whereof the said A. B. hath contracted with C. D., of —, of which ship when finished, we agree that E. F., of —, shall be master, and that each of us shall pay his full proportional part of the money to be paid for the building of the said ship, at the time the same shall become due by the contract in that behalf, and also of the charge of the outset and fitting the said ship to sea, for such voyage, as the major part of the owners thereof, according to their parts therein, shall agree.

The parts to be held by us respectively of said ship are as follows, viz.: (state same).

Witness our hands this — day of —, 1—.

In presence of

(Signatures of parties.)

M. P

No. 166.

Bill of lading.

Received on boat Occidental at —, of A. F. P. (for M. C.), 52,900 feet of boards and plank in good order and condition, to be delivered to Messrs. V. & J., at A., in same order and condition; also, one hundred dollars on account of freight.¹

Dated —, 1—.

Signed, H. B.

(Master, or Captain.)

[Or, shipped by A. G., on board the (description of vessel) called the (name of vessel), whereof E. A. is master, now lying at —, and bound for — (describe goods) in good order and condition, being marked and numbered as follows: (state manner), and to be delivered in like order and condition, at —, the dangers of the seas only excepted, to H. R., or to his assigns, he paying the freight for the said goods, with primage and average accustomed.

In witness whereof, the said master has on this — day of —, 1—, affirmed to (three) bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

(Signature of master.)

Master.

1. A bill of lading is defined to be the written evidence of a contract for the carriage and delivery of goods sent by water, for a certain freight. It is signed by the captain or master of the ship or vessel, and states, among other things, by whom the goods are shipped, and where and to whom they are to be delivered. There are generally three or more parts of the instrument, one of which is usually sent to the consignee by the ship which carries the goods; another is sent to him by some other conveyance, and a third is kept by the merchant or shipper. (Covill v. Hill, 4 Den. 323, 330.)

Contracts for the freighting of goods on our canals are usually less full and formal than when the property is to be carried by sea; but they must have all the essential qualities, or else they cannot have the effect of bills of lading. (Id.)

The form first above given is more adapted for inland navigation, and is in substance the form of the bill in the case above cited. The second form above given is the usual form in shipping to foreign ports.

See, also, as to form and effect of

bill of lading and signature thereto, Dow v. Greene (24 N. Y. 638); Lang v. N. Y. Central Railroad Co. (50 id. 76); Van Etten v. Newton (29 N. Y. State Rep. 411); S. C. (8 N. Y. Supp. 478); Jennings v. Grand Trunk R. Co. (52 Hun, 227); McKinney v. Jewett (90 N. Y. 267); Nicholas v. N. Y. Central, etc., R. Co. (89 id. 370); Koenigsheim v. Hamburg and Am. Packet Co. (17 N. Y. Week. Dig. 405); Holsapple v. Rome, Water-town, etc., R. Co. (86 N. Y. 275); Sherman v. Inman Steamship Co. (11 N. Y. Week. Dig. 267); Spinetti v. Atlas Steamship Co. (80 N. Y. 171); Swinger v. Raymond (83 id. 192); Merchants' Bank v. Union R. R., etc., Co. (69 id. 373); Wolfe v. Myers (3 Sandf. 7); Abbe v. Eaton (51 N. Y. 410); Nelson v. Stephenson (5 Duer, 558); Park v. Preston (108 N. Y. 434); Price v. Powell (3 id. 322); Ellis v. Willard (9 id. 529); Mercantile Ins. Co. v. Caleb (20 id. 173); Phelps v. Williamson (5 Sandf. 578); Aymar v. Astor (6 Cow. 267); Furman v. Union Pac. R. Co. (106 N. Y. 579), among other cases.

As to protection, afforded to persons advancing money upon bills of lading, etc., by section 3 of the Factors

and Warehousemen Act, chap. 179 of M. & T. Bank of Buffalo v. F. & M. Laws of New York, of 1830, see Moore Nat. Bank of Buffalo (60 id. 40); v. Kidder (34 Hun, 534, and cases Howland v. Woodruff (id. 73), S. C. there cited); Farmers and Mechanics' (16 Abb. N. S. 411); Dorrance v. Nat. Bank of Buffalo v. Logan (74 N. Dean (106 id. 203); Cartwright v. Y. 568); Same v. Armstrong (id. Wilmerding (24 id. 521); Covell v. 587); Soltau v. Gerdau (119 id. 380); Hill (6 id. 375).

No. 167.

Agreement submitting controversies, etc., to arbitration, full form.

(N. Y. Code Civ. Proc., § 2366.)

Whereas, matters are now in controversy and difference, between the undersigned A. B. and C. D., both of — (which matters might be made respectively the subjects of actions).¹

Now, therefore, we, the said A. B. and C. D., do hereby mutually covenant and agree, to and with each other, to submit, and do hereby submit, all and all manner of actions, cause and causes of action, suits, controversies, claims and demands whatsoever now pending, existing or held by and between the said parties to (naming arbitrators), who, or any two of whom, shall arbitrate, award, adjudge and determine of and concerning the same (with power to award the payment of costs and expenses of such arbitration).²

And we do mutually further covenant and agree to and with each other, that the said award to be made by said arbitrators, or any two of them, or of an additional arbitrator (or, umpire), selected (or, appointed) by them, as hereinafter provided for, shall in all things by us, and each of us, be well and faithfully kept and observed; provided, however, that the said award shall be made in writing, under the hands of the said arbitrators, or any two of them [and duly acknowledged, or proved and certified as required by law, and filed in the — county clerk's office (or, in the office of the clerk of the — court), or, be delivered to the said parties in difference, or either of them, or his attorney], on or before the — day of —, 1—.

(The said arbitrators may select (or, appoint) an additional arbitrator (or, umpire), by appointment in writing.)³

And we further agree, that a judgment, etc. (concluding as in form No. 168).⁴

In presence of

C. H.

A. B.

C. D.

(Acknowledgment or proof as in chap. 3, forms Nos. 89, etc.)

1. The N. Y. Code of Civ. Proc., § 2366, requires that the matter submitted should be a controversy which might be the subject of an action. State by statute, see N. Y. Code Civ. Proc., §§ 2377, 2378.

3. See section 2367 of N. Y. Code of Civ. Proc., as to additional arbitrator or umpire.

2. As to costs and expenses of arbitration as regulated in New York

4. See notes to form No. 168.

No. 168.

Agreement submitting controversies to arbitration; short general form.

(N. Y. Code Civ. Proc., § 2366.

We, A. B., of, etc., and C. D., of, etc., do hereby mutually covenant and agree to submit all our controversies and matters in difference between us of every name, kind and nature existing at the date of this agreement, and which might respectively be the subjects of actions, to the arbitration, determination and award of M. N., etc. (naming arbitrators), as arbitrators, the said arbitrators, or any two of them,¹ to hear and determine the same, and all matters relative thereto (with power to award the payment of costs and expenses of such arbitration),² and to make their award in writing, on or before the — day of —, 1—.

(The said arbitrators may select (or, appoint) an additional arbitrator (or, an umpire) by appointment in writing.)

And we further covenant and agree (pursuant to the provisions of section 2366 of the Code of Civil Procedure of the State of New York) that a judgment of a court of record, to-wit (the Supreme Court to be entered in the county of

—)³ shall be rendered upon the award made pursuant to this submission.

Witness our hands (and seals), this — day of —, 1—.

In presence of

F. R.

A. B.

C. D.

(Acknowledgment or proof, as in chapter 3, forms Nos. 89, etc.)

1. By section 2372 of the N. Y. Code of Civil Procedure, all the arbitrators selected as prescribed in that act must meet together and hear all the allegations of the parties, but an award by a majority of them is valid, unless the concurrence of all is expressly required in the submission. This provision, however, only applies to submissions made as prescribed in title 8 of chapter 17 of that statute. See *Lorenzo v. Dewey* (26 Hun, 447).

2. See as to costs upon submissions under that act, sections 2377 and 2378 of the N. Y. Code of Civil Procedure. The authority to award

against parties the costs of the arbitration was an incident of the authority contained in the general submission of their disputes. (*N. Y. Lumber, etc., Co. v. Schneider*, 119 N. Y. 475, 482.)

3. The name of the court must be inserted. If the Supreme Court is specified, the submission may also specify the county in which the judgment may be entered. If it does not, the judgment may be entered in any county. (*N. Y. Code Civ. Proc.*, § 2366.)

4. See *The N. Y. Lumber, etc., Co. v. Schneider* (119 N. Y. 475) generally as to arbitrations.

No. 169.

Agreement submitting a particular controversy to arbitrators.

(*N. Y. Code Civ. Proc.*, § 2366.)

Whereas, a controversy is now pending between the undersigned A. F. and A. M., in regard to (state subject of controversy), [which might be the subject of an action]:

Now, therefore, we do hereby mutually covenant and agree to submit the said controversy, and all questions of difference in regard thereto, to the arbitrament and decision of (naming arbitrators) [or any two of them].

[The said arbitrators may select, etc. (as in form No. 167.).]

And we do further mutually covenant and agree, etc. (concluding as in form No. 167).¹

In presence of

M. N.

A. F.

A. M.

(Acknowledgment or proof as in chapter 3, forms Nos. 89, etc.)

1. See note to forms Nos. 167 and 168.

No. 170.

Agreement for the sale and purchase of a freehold estate in lands.

Articles of agreement had, made, concluded and agreed upon between A. B., of, etc., of the one part, and C. D., of, etc., of the other part.

First. The said A. B., in consideration (of the sum of — dollars to him in hand paid by the said C. D., at or before the sealing and delivery of these presents, and) of the (further) sum of — dollars to be paid (or secured) as hereinafter is mentioned, doth hereby for himself, his heirs, executors and administrators, and every of them, covenant, promise and agree to and with the said C. D., his heirs, executors and administrators and every of them, by these presents, that he, the said A. B., his heirs and assigns (and all and every other person and persons whomsoever, claiming or to claim any right, title or interest under him or any person or persons whomsoever, of, in and to the lands, hereditaments and premises hereafter mentioned, including rights of dower vested or inchoate¹) shall and will at the proper costs and charges of the said A. B., his heirs and assigns, on (or before) the — day of — next ensuing [at (stating place of delivery) at — o'clock in the — noon] upon payment being made [and security given as hereinafter provided, by said C. D.] by warranty deed to be approved by the counsel of said C. D., [and containing also covenants (stating other covenants required)] well and sufficiently convey and grant to the said C. D., his heirs and assigns (in fee-simple absolute)² all that certain lot etc., situate, etc., (describing premises to be conveyed) now in the tenure and occupation of, etc., or his assigns. In consideration whereof, the said C. D., for himself, his heirs, executors, administrators and assigns, doth hereby covenant, promise and agree, to and with the said A. B., his heirs, executors and administrators, by these presents, that the said C. D., his heirs, executors or administrators, or some of them, shall and will, on having a good title, to the satisfaction and approbation of his counsel or conveyancer to the estate aforesaid, well and truly pay, or cause to be paid, unto the

said A. B., his heirs, executors and administrators, the aforesaid sum of — at the time of executing the said conveyance (or well and truly pay, or cause to be paid, unto the said A. B., the sum of — dollars, part of the sum aforesaid, at the time of executing said conveyance, and will at the same time secure the payment of the balance of the aforesaid sum of — dollars in — years from the date of said conveyance by his bond in the penal sum of — dollars and his mortgage upon said premises, to be executed and delivered to said A. B., conditioned for the payment of the said sum of — as aforesaid, with interest thereupon at the rate of (six) per centum per annum, payable (semi-annually) until the whole of said principal sum shall be paid. Said bond and mortgage to contain the usual covenant of insurance of the buildings standing or to be erected upon said premises, to the amount of — dollars and tax, assessment and interest conditions as required by said A. B.)

(Said C. D. also agrees to pay all taxes and assessments that shall be taxed or assessed upon said premises from the date hereof until the payments shall be made and security given as hereinafter provided.)³

Said A. B. agrees that on the (said) — day of — 1 —, and upon the performance by said C. D. of the covenants herein contained on his part to be performed, he will deliver to said C. D. quiet and peaceable possession of said premises in as good condition as they now are, natural wear excepted.

It is further covenanted and agreed, that in case the said C. D. has possession of said premises before the execution and delivery of said deed, and in case of failure on his part to perform any of the covenants herein contained, he will yield and deliver to the said A. B. quiet and peaceable possession of said premises; that the said A. B. may immediately after such failure re-enter and take possession of the same, without any previous notice to quit, in reference to any legal proceedings to recover possession thereof.

And for the true performance of all and every the covenants and agreements aforesaid, each of said parties to these presents doth hereby bind himself, his heirs, executors, administrators and assigns to the other of them, his heirs, ex-

ecutors, administrators and assigns in the penal sum of — dollars (or, doth hereby agree to pay the sum of — dollars as liquidated damages and not as a penalty.)³

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.⁴

A. B. [L. S.]

C. D. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment or proof as in chap. 3, forms No. 6, etc.)

1. Where there is any known existing right or interest in the premises other than that of the vendor it is better, if possible, to procure the agreement of the owner of such interest to convey.

A widow may dispose of her dower right before it is admeasured. (*Bostwick v. Beach*, 103 N. Y. 414; cited in note 4 to this form.)

A purchaser of real estate for full value is entitled to have incumbrances removed out of the purchase-money (*Id.*)

2. Or state other estate conveyed.

3. See *Kern v. Towsley* (45 Barb. 150), as to effect of this covenant.

4. As to the construction of such an agreement for damages on breach of the contract, see *Staples v. Parker* (41 Barb. 648, and cases there cited); *Little v. Banks* (85 N. Y. 258, 265); *Howell v. Long Island R. Co.* (37 Hun, 381); *Leggett v. Mut. Life Ins. Co. of N. Y.* (53 N. Y. 394, rev'g S. C., 64 Barb. 23); *Noyes v. Phillips* (60 N. Y. 408); *Smith v. Coe* (33 N. Y. Super. Ct. 480); *Colwell v. Lawrence* (38 N. Y. 71, aff'g S. C., 38 Barb. 643).

Where executors, empowered by the terms of the will to sell their testator's real estate, enter into an executory contract for such sale, performance of the contract may be en-

forced in equity at the suit of the purchaser. (*Bostwick v. Beach*, 103 N. Y. 414.)

Plaintiffs, as executors, having, by the will of their testator, a power of sale of the real estate, on December 27, 1881, signed a paper acknowledging receipt from defendant of \$500, to apply on purchase of a farm, which they stated had been "bargained to be sold to him for \$1,000 on 1st day of March, 1882, on payment of the balance." In an action for a specific performance, *held*, that this constituted a valid contract of sale. (*Id.*) See, also, *McDermott v. Palmer* (11 Barb. 9; rev'd in part, S. C., 8 N. Y. 383); *Richards v. Edick* (17 Barb. 260).

Where the testator's widow was also executrix, and as such one of the parties to the contract of sale, and was made a party defendant to an action for specific performance, both in her representative and individual capacity, *held*, that by joining in the contract of sale, without any reservation therein of her dower right, she consented, so far as her individual rights were concerned, to make a good title and to look to the purchase-money, as a substitute for the land, for her dower right therein. (*Bostwick v. Beach*, *supra*.)

See, also, as to the rights of the

purchaser to the rents and profits of the land, and of the vendor to interest upon the purchase-money, Id.

By section 8 of title 1 of chapter 7 of the N. Y. Revised Statutes, it is provided that every contract for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, expressing the consideration, be in writing, and be subscribed by the party by whom the sale is to be made. (2 R. S. 135, § 8; 7th ed., 2326.)

By section 9 of same title it is provided that every instrument required to be subscribed by any party, under the last preceding section, may be subscribed by the agent of such party lawfully authorized. (Id., § 9.)

By section 10 of same title it is provided that nothing in that title contained shall be construed to abridge the powers of courts of equity to compel the specific performance of agreements in cases of part performance of such agreements. (Id., § 10.)

The above-mentioned statute, while it applies to contracts relating to real property within the State of New York, does not apply to those made within but relating to real property without the State. (*Marie v. Garrison*, 13 Abb. N. C. 299.) See, also, *Burrall v. Root* (40 N. Y. 496).

It seems, that under the statute in this form a contract in violation of it is absolutely void, in equity as well as at law. (*Marie v. Garrison*, *supra*, p. 261.)

It is not enough to bring a contract within the above-mentioned eighth section, to show that it concerns an interest in lands. It must in substance be a sale. (Id., p. 271.)

A contract for the sale of a parcel of land, described by metes and

bounds, stated that it contained a certain number of acres "more or less," for which the purchaser agreed to pay \$350 per acre. When the deed thereof was subsequently executed in pursuance of the contract, the vendor claimed that by survey there were two acres more than stated in the contract, and the corrected number was stated in the deed, and the consideration expressed and paid was calculated on the basis of that number of acres; *held*, in an action to recover back the money paid for the land in excess of the actual quantity in the price, that the two instruments, construed together, showed that the sale was by the acre, and not in bulk. (*Wilson v. Randall*, 67 N. Y. 338, affg S. C., 7 Hun, 15. See, also, *Faure v. Martin* (7 N. Y. 210).

As to execution of contract for sale of real estate under New York statute, see *Worrall v. Munn* (5 N. Y. 229); *DeBeerski v. Paige* (36 id. 537); *Snyder v. Neefus* (53 Barb. 63); *Pringle v. Spaulding* (id. 17), among other cases.

It has been held that a contract for the sale of land, which gives no other description of the premises than the simple statement that the vendor's "farm" is thereby sold, is not void for uncertainty, that it presents merely a case of latent ambiguity, which may be explained by parol evidence. (*Brinkerhoff v. Olp*, 35 Barb. 27.) This case has been said to carry the doctrine laid down by it "to its utmost limit." (*Rourke v. Murphy*, 12 Abb. N. C. 405, per Ingalls, J.) See, also, *Rollin v. Pickett* (2 Hill, 552), holding that an agreement to convey seventy acres of land without describing them, or designating the place, is void for uncertainty, and that a claim giving some clue to the identity of a small part

only did not help it. And see *Richards v. Edick* (17 Barb. 260).

In a contract consisting of an agreement on the one hand to execute and deliver a deed of lands, and on the other to pay and secure the stipulated price, these to be simultaneous and concurrent acts, the covenant of one to deliver the deed, and by the other to pay and secure the purchase-price, are dependent covenants, and neither party can maintain an action against the other at law for a breach, without showing performance or an offer to perform on his part. (*Frey v. Johnson*, 22 How. Pr. 316.) See, also, that case and *Beecher v. Conradt* (13 N. Y. 108), cited therein, as to payment by installments.

The purchaser of lands, from the time of entering into an effectual contract for the purchase, is deemed the owner in equity, and his estate descends, and is devisable. (*Cogswell v. Cogswell*, 2 Edw. 231; *Pelton v. Westchester Fire Ins. Co.*, 77 N. Y. 605.) The vendor from that time

retains the legal title as a mere lien or security for the unpaid purchase-money. (*Moore v. Burrows*, 34 Barb. 173.) See also *Williams v. Haddock* (145 N. Y. 144).

A statement, therefore, in an application for a policy of insurance by one who is in possession of lands under a contract of purchase by him, and of sale by the owner of the fee, that he is the owner is not, *it seems*, untrue; nor, *it seems*, is the omission to state the nature of the interest a breach of a condition in the policy, forfeiting it in case the interest of the assured is other than "the entire, unconditional and sole ownership," and it is not so represented to the company. (*Pelton v. Westchester Fire Ins. Co.*, *supra*.)

As to effect of delivery and acceptance of deed upon provisions of the contract, see *Schoonmaker v. Hoyt* (148 N. Y. 425, 430). See also *Spaulding v. Fierle* (86 Hun, 17); *Canda v. Totten* (87 id. 72); *Hays v. Miller* (70 N. Y. 112, aff'g S. C., 6 Hun, 320); *Miller v. Eheinzwieg* (79 Hun, 1).

No. 171.

An agreement for a lease.

Memorandum of an agreement made this — day of —, in the year 1—, between A. B., of the (city) of —, and C. D., of (said city), witnesseth, that the said A. B. agrees by indenture, to be executed on or before the — day of — next, to demise and let, to the said C. D., the house and lot known as number — in — street in said city, at present in the occupation of E. F., to hold to the said C. D., his executors, administrators and assigns, from the first day of May next, for and during the term of (twenty-one years), at or under the clear yearly rent of — dollars, payable quarterly, clear of all taxes and deductions, in which lease there shall be contained covenants on the part of the said C. D., his executors, administrators and assigns, to pay rent (except in case the premises are destroyed by fire the rent is to cease until they are rebuilt)¹ and to pay all taxes and assessments; to repair the premises (except damages by

fire); not to carry on any offensive (or other) business upon the premises (except by the written permission of the said A. B.); to deliver the same up at the end of the term in good repair (except damages by fire as aforesaid); with all other usual and reasonable covenants; and a proviso for the re-entry of the said A. B., his heirs or assigns, in case of the non-payment of the rent for the space of fifteen days after either of said rent days, or the non-performance of any of the covenants; and there shall also be contained therein covenants on the part of said A. B., his heirs and assigns, for quiet enjoyment, to renew said lease at the expiration of said term, for a further period of (twenty-one years) at the same rent, on the said C. D., his executors, administrators or assigns, paying the said A. B., his executors, administrators or assigns, the sum of — dollars, as a premium for such renewal; and that in case of an accidental fire at any time during the said terms or either of them, the said A. B. will forthwith proceed to put the premises in as good repair as before the fire, the rent in the meantime to cease; and the said C. D. hereby agrees to accept such lease upon the terms aforesaid; and it is mutually agreed that the costs of making, executing and recording said lease and a counterpart thereof, shall be borne by the said parties equally.

As witness our hands and seals the day and year first above written.

A. B. [L. S.]

C. D. [L. S.]

Sealed and delivered in presence of

E. F.

(Acknowledgment or proof as in chap. 3, forms Nos. 6, etc.)

1. See chapter 345 of Laws of New York No. 783, and the cases referred to in that note.

No. 172.

An agreement for lodgings or part of a house.

Memorandum of an agreement entered into the — day of —, 1—, by and between A. B., of —, and C. D., of —, whereby the said A. B. agrees to let, and the said C.

D. agrees to take, the rooms or apartments following: that is to say, an entire first floor, and one room in the attic story or garret, and a back kitchen and cellar opposite, with the use of the yard for drying linen or beating carpets or clothes, being part of a house and premises in which the said A. B. now resides, situate and being in number — in said street, in the city of New York, to have and to hold the said rooms and apartments, and the use of the said yard as aforesaid, for and during the term of half a year, to commence from the — day of —, instant, at and for the yearly rent of — dollars, lawful money of the United States, payable monthly, by even and equal portions, the first payment to be made on the — day of —, next ensuing the date hereof; and it is further agreed, that at the expiration of the said term of half a year, the said C. D. may hold, occupy and enjoy the said rooms and apartments, and have the use of the said yard as aforesaid, from month to month, for so long a time as the said C. D. and A. B. may and shall agree at the rent above specified; and that each party be at liberty to quit possession on giving the other a month's notice in writing; and it is also further agreed, that when the said C. D. shall quit the premises, he shall leave them in as good condition and repair as they shall be in on his taking possession thereof, reasonable wear and damage by the elements excepted.

As witness our respective hands and seals the day and year aforesaid.¹

In presence of

E. F.

A. B. [L. S.]

C. D. [L. S.]

(Acknowledgment or proof as in chapter 3, forms Nos. 6, etc.)

1. See *Dollard v. Roberts* (130 N. Y. 269).

No. 173.

An agreement respecting a party-wall.

This agreement, made this — day of —, in the year 1—, between D. L., of the city of New York, merchant, of the first part, and P. S., of said city, merchant, of the second part, witnesseth: Whereas, the said D. L. is the owner in fee of the lot and store known as number — in — street,

in the first ward of the city of New York, and the said P. S., the owner in fee of the lot known as number — in — street, aforesaid, immediately adjoining to and on the south-erly side of said lot and store number —, on which lot of the said P. S. he is about to erect a brick store; and whereas, it has been agreed by and between the said parties that the said P. S., in erecting his said store, shall make use of the gable-end wall of the said store of the said D. L., immediately contiguous to and adjoining the said lot of the said P. S., as a party-wall, upon the terms, conditions and considerations hereinafter mentioned, the said wall of the said D. L., so to be used as a party-wall, standing and being entirely on the said lot of the said D. L. Now, therefore, this agreement witnesseth, that the said D. L., for and in consideration of the sum of — dollars, to him in hand paid by the said P. S., at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, doth for himself, his heirs, executors, administrators, and assigns, covenant, grant, promise, and agree to and with the said P. S., his heirs, executors, administrators, and assigns, forever, that he, the said P. S., his heirs and assigns, shall and may, in erecting and building the said store upon the said lot of the said P. S., freely and lawfully, but in a workmanlike manner, and without any interruption, molestation, or hindrance of or from said D. L., his heirs or assigns, make use of said gable-end wall of said store of the said D. L., immediately adjoining or contiguous to the said lot of the said P. S., or such parts or so much thereof as he, the said P. S., his heirs or assigns, may choose as a party-wall. And, further, that should the said wall, hereby made a party-wall, be at any future time or times injured or destroyed, either by decay, lapse of time, fire, accident, or other cause whatever, so as to require to be either repaired or rebuilt in whole or in part, then and in every such case, the said D. L. and the said P. S. by these presents, for themselves, respectively, and their respective heirs and assigns forever, mutually covenant and agree to and with each other and their respective heirs and assigns forever, that such reparation or rebuilding, as the case may be, shall be at the mutual, joint and equal

expense of them, the said D. L. and P. S., their respective heirs and assigns forever ; as to so much and such parts of said wall as shall be used by the said P. S., his heirs and assigns, in erecting and building the said store which he is now about erecting on his said lot, and as to all coping of the said gable end, whether such coping be used by the said P. S., his heirs or assigns, in erecting and building the said store or not, and as to the residue of said wall not used by said P. S., his heirs or assigns, in erecting and building the said store, such reparation or rebuilding of such residue of the said wall shall be at the sole and separate expense of the said D. L., his heirs or assigns forever ; and that in every case of such reparation or rebuilding, should the same be necessary and proper, and either party, his heirs or assigns, request the other to unite in the same, and to contribute to the expense thereof, according to the true intent and meaning of this agreement, then the other party, his heirs or assigns forever, may cause such reparation or rebuilding to be made and done, and charge the other party, his heirs and assigns, forever, with the proportion of the expenses, costs, and charges thereof, according to the true intent and meaning of this agreement ; and that in every case of such reparation or rebuilding, as the case may be, such repairs shall restore the said wall to the state and condition in which it now is, in all respects as nearly as may be ; and that in every case of rebuilding, such wall shall be rebuilt upon the same spot on which it now stands, and be of the same size and the same materials, as far as they may go, and as to the deficiency with others of the same quality and goodness, and in all respects shall be made of the same quality and goodness as the present wall. It being further in like manner mutually understood and agreed by and between the said parties, that this agreement shall be perpetual, and run with the land and be obligatory upon the heirs and assigns of the said parties, respectively, forever, and in all cases and on all occasions, shall be construed as a covenant running with the land ; but that this agreement shall not have the effect or operation of conveying to the said P. S., his heirs or assigns, the fee-simple of the one moiety or any other part of the ground or

land on which the said wall now stands, but only the right to the use and benefit of the said wall as a party-wall forever.¹

In witness, etc. (as in form No. 163.)

D. L. [L. S.]

P. S. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment or proof as in chap. 3, forms Nos. 6, etc.)

1. A covenant to contribute to the construction of a party-wall, when he shall use the same, entered into by an owner of land, for himself, his heirs and assigns, does not run with the land, and is not enforceable against a subsequent grantee of the land; and this, although his deed is by its terms subject to the agreement for the building of the wall containing the covenant. (*Scott v. McMillan*, 76 N. Y. 141; *Hart v. Lyon*, 90 id. 663; *Squires v. Pinckney*, 13 N. Y. State Rep. 749.)

It seems, however, that a right given by the contract to either of the parties, their heirs and assigns, to rebuild and repair the party-wall is a covenant running with the land. (*Hart v. Lyon*, *supra*.)

An owner of a lot who is using a party-wall standing partly thereon, and who, pursuant to the demand of the other owner, has united in the appointment of arbitrators to appraise its value pursuant to the provisions of the agreement under which it was originally built, is concluded by the award, not only as to the amount but as to his liability to pay. (*Bedell v. Kennedy*, 109 N. Y. 153, aff'g S. C., 38 Hun, 510.) See, also, *Guentzer v. Juch* (51 id. 397).

See, also, *Kearr v. Sossan* (9 N. Y. State Rep'r, 25); *Kingsland v. Tucker* (115 N. Y. 574, rev'g S. C., 44 Hun, 91); *Gibson v. Holden* (Ill., 1886, 1 Western Rep'r, 677; S. C.,

3 Northwestern Rep'r, 292, and cases there cited); *McDonnell v. Culver* (8 Hun, 158), as to effect of such a covenant.

Without an agreement between the owners allowing them, windows have no proper place in a party-wall. Whether the erection of fire-escapes would be a proper use thereof, *query?* (N. Y. Supr. Ct., Sp. Term, *St. John v. Sweeney*, 59 How. Pr. 175.) See, also, *N. C. Bank of Albany v. Gray* (71 Hun, 295, aff'd S. C., 144 N. Y. 701, without op.)

See, also, *Vrooman v. Jackson* (6 Hun, 326); *Musgrave v. Sherwood* (23 id. 669); *Same v. Same* (54 How. Pr. 338); *Rindge v. Baker* (57 N. Y. 209); *Brown v. McKee* (57 id. 684); *Hendricks v. Stark* (37 id. 106); *Fettecht v. Leamy* (9 Bosw. 510); *Nash v. Kemp* (12 Hun, 592); *Potter v. White* (6 Bosw. 644); *Maxwell v. East River Bank* (3 id. 124); *Webster v. Stevens* (5 Duer, 553); *Brondage v. Warner* (2 Hill, 145); *Wolf v. Frost* (4 Sandf. Ch. 72); *Partridge v. Gilbert* (15 N. Y. 601, aff'g S. C., 3 Duer, 185); *Armstrong v. Schermerhorn* (2 N. Y. Leg. Obs. 40); *Campbell v. Mesier* (4 Johns. Ch. 334); *Sherred v. Cisco* (4 Sandf. 480); *Brown v. Pentz* 11 N. Y. Leg. Obs. 24; 1 Abb. Ct. App. Dec. 227); *Burlock v. Peck* (2 Duer, 90); *Ketteltas v. Penfold* (4 E. D. Smith, 122); *Ogden v. Jones* (2 Bosw. 685); *Hamman v. Jordan* (36 N. Y. State Rep'r, 423; S. C., 13 N. Y. Supp. 228); *Mott v. Oppenheimer* (39 N. Y. State Rep. 458; S. C., 15 N. Y. Supp.

166); 29 Abb. N. C. 218; Hamman v. Jordan (30 N. Y. State Rep. 249; S. C., 9 N. Y. Supp. 423); Heartt v. Kruger (121 N. Y. 386); Squires v. Pinckney (13 N. Y. State Rep. 749); Scott v. McMillan (76 N. Y. 141); Same v. Same (16 N. Y. State Rep. 795); Berry v. Todd (15 id. 371); Keller v. Abrahams (13 Daly, 188), among other cases, as to rights of parties to agreement for a party-wall, and owners of the property to which such agreement relates.

No. 174.

Agreement respecting a party-wall, another form.

It is hereby agreed by and between J. B. T. and A. G. Q., both of the (city) of (Albany), in consideration of the mutual covenants (and grants) herein contained, and of the sum of one dollar by each to the other in hand paid (and to settle and prevent all disputes), that the (north) wall of the building lately erected by said J. B. T., (mainly) upon his lot on the (east) side of — street in said city, which lot was conveyed to him by I. J., and wife, by deed dated —, 1—, and recorded in — county clerk's office, in Book of Deeds No. —, at page —, adjoining on the (south), a lot of said A. G. Q., conveyed to said Q. by I. J., and wife, by deed dated —, 1—, and recorded (or, to be recorded) in — county clerk's office (in Book No. — of Deeds, at page—), which said (north) wall was built at the joint expense of the parties hereto, and which stands (about) one-half upon the said lot of said Q., was built as, is and shall remain forever a common and party-wall to be continued and used as such forever by the parties hereto, their heirs and assigns, for all the purposes of an exterior wall of their respective buildings, and of the proper and usual connections of other walls therewith, and of supporting their roofs thereupon, and inserting joists and timbers therein, and with all other rights, circumstances, incidents and privileges, pertaining and belonging to a party-wall.

And it is further agreed between the said parties, in consideration as aforesaid, that if it shall hereafter become necessary to repair or rebuild the whole, or any portion of the said party-wall, the expense of such repairing or rebuilding shall be borne equally by the said parties, their respective heirs and assigns, and that whenever said party-wall, or any

portion thereof shall be rebuilt, it shall be erected on the same ground where it now stands, and be of the same size and of the same or similar materials, and of like quality with the present wall.

(And it is further agreed between the said parties in consideration as aforesaid that the dividing line between the said lot of said T., and the said lot of said Q., shall be and remain forever a line, commencing at the middle point of said party-wall on — street, and running thence (easterly) through the middle of said wall to the end thereof, and thence continued directly to the (east) bounds of said lots.)

(And the said J. B. T. doth hereby grant and convey in consideration as aforesaid to said A. G. Q., all of his (said T.'s) said lot which lies north of the said dividing line, and said A. G. Q. doth hereby grant and convey to said J. B. T. all of his (said Q.'s) said lot which lies south of said dividing line.)

The covenants herein contained shall be perpetual and shall bind the parties hereto, their heirs and assigns, and shall be at all times construed as covenants running with the land.

In witness, etc. (as in form No. 163.)

J. B. T. [L. S.]

A. G. Q. [L. S.]

Sealed and delivered in presence of

E. F.

(Acknowledgment or proof as in chap. 3, forms Nos. 6, etc.)

No. 175.

Agreement for building a house.

Be it remembered, that on this — day of —, 1—, it is agreed between A. B., of —, and C. D., of —, in manner and form following, viz.: the said C. D., for the considerations hereinafter mentioned, doth for himself, his heirs, executors and administrators, covenant with the said A. B., his executors, administrators and assigns, that he, the said C. D., or his assigns, shall and will, within the space of — next after the date hereof, in a good and workmanlike manner, and at his own proper charge and expense, at —, well and substantially erect, build and finish, one house, or messuage,

according to the draught, scheme, specifications and explanation hereunto annexed, with such stone, brick, timber or other materials as the said A. B. or his assigns shall find or provide for the same (or, of good and substantial materials);¹ in consideration whereof the said A. B. doth for himself, his executors and administrators, covenant with the said C. D., his executors, administrators and assigns, well and truly to pay unto the said C. D., his executors, administrators and assigns, the sum of — of lawful money of (the United States), in manner following, viz. : — part thereof at the beginning of the said work, — more, another part thereof, when the said work shall be half done, and the remaining — in full for the said work, when the same shall be completely finished. [And also that he, the said A. B., his executors, administrators or assigns, shall and will, from time to time, as the same shall be required, at his or their own proper expense, find and provide stone, brick, timber or other materials necessary for making, building and finishing the said house.]² And for the performance of all and every the articles and agreements above mentioned, the said A. B. and C. D. do hereby bind themselves, their executors, administrators and assigns, each to the other, in the penal sum of — firmly by these presents.³

In witness, etc. (as in form No. 163).

A. B. [L. S.]

C. D. [L. S.]

(Acknowledgment or proof as in chap. 3, forms Nos. 6, etc.)
(Annex specifications.)

1. Substitute this clause if the materials are to be furnished by the contractor. the materials are to be furnished by the owner.

3. See, also, the special provisions

2. Omit this clause in brackets if contained in next form, No. 176.

No. 176.

An agreement to erect a building or buildings ; another form, containing special provisions.

Articles of agreement made, agreed and fully concluded upon the — day of —, 1—, between A. B., of the one part, and C. D., of the other part, as follows :

First. The said A. B., for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree to and with the said C. D., his executors, administrators and assigns, that he, the said A. B., his executors or administrators, shall and will, on or before the — day of —, 1—, now next ensuing, in consideration of the sum of — dollars, of lawful money, etc., to be paid to him at the time (or, times) hereinafter mentioned, build and completely cover in and finish upon ground belonging to the said C. D., at E., the several edifices and buildings set forth in the schedule, proposal or estimate hereunder written, and according to the plan and elevation, signed by the said A. B., the same to be done within the time aforesaid (except the whitewashing of the plastering, which is not to be done until after the aforesaid works are finished) in a good, workmanlike, substantial manner, and to the good liking and satisfaction of F. G., builder, or any other surveyor, whom the said C. D. shall for that purpose name and appoint, to be testified by a writing or certificate under the hand of the said F. G., or such other person or surveyor; and also shall and will find and provide good, proper and sufficient materials of all kinds whatsoever, for erecting the said edifice(s) and building(s), and completely finishing the said work(s), building(s) and erection(s).

And it is further agreed, by and between the said parties, that if the said A. B., his executors or administrators, shall in any manner neglect or be guilty of any delay whatsoever, in the building, finishing and completing the said work(s), erection(s) and building(s) so contracted by the said A. B. to be done as aforesaid, and the said C. D. shall give or leave notice in writing of such neglect or delay, at the place of abode of him, the said A. B., his executors or administrators, that then and in such case it shall and may be lawful for the said C. D., his executors or administrators, within the space of twenty days after such notice given or left as aforesaid (in case the said A. B., his executors or administrators, shall not according to the direction of the said F. G. or C. D., proceed on the completion of the said works, in pursuance of the said notice), to purchase proper and sufficient materials, and also to employ a sufficient number of workmen to finish and complete the said

edifice(s), building(s), work(s) and erection(s), and that the said C. D., his executors, administrators and assigns, shall and may deduct and retain to themselves the costs of such materials, and all such sum and sums of money as he or they shall pay to such workmen, for the completion of such buildings, etc., out of the money that shall be so due to him, the said A. B., in pursuance and by virtue of the said agreement. And that the said A. B., his executors or administrators, shall not nor will in any manner do, or cause or procure to be done, any act, matter or thing whatsoever, to prevent or hinder the said persons so to be employed by the said C. D., his executors, administrators or assigns, from completing and finishing the said edifice(s), etc., and other the said work(s) in pursuance of the said covenant, or in using the materials which shall be provided for the doing of the same, or in any way molest, or cause to be molested, the said C. D., his executors or administrators, or any person or persons employed by him or them in the doing thereof.

And the said C. D. doth hereby agree for himself, his heirs, executors and administrators, that he, the said C. D., his executors, administrators and assigns, shall and will well and truly pay, or cause to be paid, unto the said A. B., his executors, administrators or assigns, the sum of — dollars, of lawful, etc., within twenty days next after the said edifice(s), building(s), work(s) and erection(s) shall be completely built, done and finished.¹

Provided always, and it is hereby agreed and declared, by and between the said parties to these presents, that in case the said C. D., his executors, administrators or assigns, shall direct any more work to be done, in or about the said buildings and premises than what is contained in the said schedule hereunder written, that then and in such case the said C. D., his executors, administrators or assigns, shall pay, or cause to be paid, unto the said A. B., his executors, administrators or assigns, so much money as such extra work shall be worth upon a reasonable valuation.

And in case it shall be thought proper by the said C. D., his executors, administrators or assigns, to diminish or omit

any part of the work in the said schedule hereunder written (or, hereto annexed), that then in such case, the said A. B., his executors, administrators or assigns, shall deduct and allow out of the money agreed to be paid by him, the said C. D., as aforesaid, so much money as the work so to be diminished or omitted shall amount unto upon a reasonable valuation, any thing hereinbefore contained to the contrary notwithstanding.

And lastly, it is hereby covenanted and agreed by and between the said parties to these presents, that if any dispute or difference shall happen, or be made, between them, touching or concerning the said edifice(s), etc., hereby covenanted to be made and done as aforesaid, or touching or concerning the money to be paid for the same, according to the admeasurement and value thereof, in case the same shall be admeasured and valued, or touching or concerning any alteration, addition or determination into or from the same, or touching or concerning any additional payment to be made by the said C. D., his executors or administrators, to the said A. B., his executors, administrators or assigns, or any allowance to be made by the said C. D., his executors, etc., in respect thereof, or touching or concerning any other matter, or thing whatsoever, relating to the work hereby contracted to be done, that then and in such case such dispute or difference shall be left to the determination and award of three indifferent persons, one to be named and appointed in writing by the said A. B., his executors, etc., the other by the said C. D., his executors, etc., and the third to be chosen by the said two persons, so to be named by the said A. B. and C. D., respectively, immediately after such dispute or difference shall so happen. And the said parties hereto do hereby covenant, promise and agree, to and with each other, that they, the said parties, shall and will severally stand to, abide, perform and keep the award and determination of the said three persons so to be chosen, or any two of them, touching the said several matters and things referred to them as aforesaid, so as the same be made in writing under the hands and seals of the said arbitrators, or any two of them, within one calendar month next after such reference.

And for the due performance of these presents, the said parties do hereby bind themselves respectively, their respective heirs, executors and administrators, each unto the other, in the sum or penalty of — dollars, of lawful money of the United States. as liquidated damages to be paid by the failing party.

In witness, etc. (as in form No. 30).²

A. B. [L. S.]

C. D. [L. S.]

Sealed and delivered in presence of
G. H.

(Acknowledgment or proof as in chap. 3, forms No. 6, etc.)
(Annex schedule, etc., referred to in above form.)

1. See also the provisions as to payment contained in last form, No. 176.

2. See *Crouch v. Gutman* (134 N. Y. 45, 585).

No. 177.

Agreement for purchase of coin, etc., at the seller's option.

(Date.)

Know all men by these presents, that I, C. B., for and in consideration of the sum of — dollars, good and lawful money of the United States, to me in hand paid by M. C. B., the receipt of which is hereby acknowledged, do agree to receive from said M. C. B., at any time within (six months) from date, he may choose to deliver the same (two thousand five hundred dollars in gold coin of the United States), for which I agree to pay to the said B. (ninety-five per cent premium on the dollar, or at the rate of one hundred and ninety-five dollars in good current funds, for each and every one hundred of coin). The said B. does not contract to deliver the (coin), but pays the (two hundred and fifty dollars) for the privilege of delivering or not, at his option.¹

C. B.

1. The above contract is taken from the case of *Bigelow v. Benedict* (70 N. Y. 202), in which case it is held that such a contract is not on its face a wager contract within the meaning of the statutory provision (1 N. Y. Rev. Stats. 662, § 8) declaring such contracts void. In the absence of evidence to the contrary it will be presumed that the

contract was made in good faith, with intent on the part of both parties to perform. (Id.)

It seems, that when an optional contract for the sale of property is made and there is no intent on the one side to sell or on the other to purchase; but merely that the differ-

ence shall be paid according to the fluctuations of the market, the contract is a wager within the meaning of the statute and so void. (Id.)

See, also, note to next form, No. 178, and see *Kingsbury v. Kirwan* (77 N. Y. 612); *Harris v. Tumbridge* (83 id. 92)

No. 178.

Another form of contract for purchase or delivery of property at option of buyer or seller.

(Date.)

For value received, the bearer may call on the undersigned for one hundred (100) shares of the (capital stock of the Western Union Telegraph Company), at seventy-seven and one-half ($77\frac{1}{2}$) per cent, any time in thirty (30) days from date.

Or the bearer may, at his option, deliver the same to the undersigned at seventy-seven and one-half ($77\frac{1}{2}$) per cent, any time within the period named, one day's notice required.

All dividends or extra dividends declared during the time are to go with the stock in either case, and this instrument is to be surrendered upon the stock being either called or delivered.¹

S. N. I.

1. See note to last form, No. 177, from which the form is taken, as to and *Story v. Salomon* (71 N. Y. 420), the legal effect of this agreement.

No. 179.

Agreement to change mortgage security.

This agreement, made the — day of —, in the year 1—, between (the rector, wardens and vestrymen of the — Church in the city of New York), of the first part, and C. M., of (the said city), of the second part, witnesseth; That whereas the said parties of the first part have sold and conveyed in fee, unto the said party of the second part, the six several lots of ground in said city known as numbers —,

for the price or consideration of (fifty thousand) dollars, part of which sum has been paid down on the delivery of the deeds therefor; and whereas, in order to secure to the said parties of the first part the payment of the residue of the said purchase-money, to-wit, the sum of (thirty thousand) dollars, in six equal payments of (five thousand) dollars each in (ten years), with interest thereon at the rate of (six) per cent per annum, the said party of the second part and —, his wife, have executed and delivered to the said parties of the first part, six several mortgages on the said premises, as collateral security for the six several bonds of corresponding amounts, executed and delivered by the said party of the second part to the said parties of the first part; and whereas, also, it may at some future time become expedient, or advantageous, for the said party of the second part to sell or otherwise dispose of the said premises, so purchased by him as aforesaid, free and clear from the incumbrance of the said mortgages: Now, therefore, this agreement witnesseth, That the said parties of the first part, for and in consideration of the premises and of one dollar to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do, for themselves, their successors and assigns, forever covenant, promise and agree, to and with the said party of the second part, his heirs, executors, administrators and assigns, that he, the said party of the second part, shall and may, at all times hereafter, have and retain the right of changing the security above mentioned, by substituting, instead of any, either or all of the said mortgages, the like security on other real estate or property of at least equal value with the said mortgaged premises. And this agreement further witnesseth: that whenever the said party of the second part, his heirs, executors, administrators or assigns, shall furnish the said parties of the first part, their successors or assigns, with such other satisfactory security as aforesaid, the said parties of the first part, their successors or assigns, shall and will, upon request to them made, forthwith execute and deliver to the said party of the second part, his heirs, executors, administrators and assigns, good and sufficient releases and discharges of the said mort-

gages or any of them, and of the said premises therein mentioned.

In witness whereof, the said parties of the first part have hereto set their corporate seal and caused their rector to sign his name hereto the day and year first above written.

| | |
|---------------------------|-----------------------------|
| [L. S.] | The Rector, etc., of the — |
| Sealed and delivered in } | Church in the City of New |
| presence of } | York, by A. B., its Rector. |
| E. F. | |

(Acknowledgment or proof as in chapter 3, form No. 6, etc.)

No. 180.

Agreement to bear equal shares in the expense of a lawsuit.

Articles of agreement, mutually made and entered into the — day of —, in the year 1—, by and between A. B., C. D., and E. F., of, etc.

Whereas, the said parties to this agreement are each in possession of, or claim title to, or some interest in, the whole or part of that certain lot, piece or parcel of land situate, etc. (describing it) (or, are each in possession of, or claim some interest in lands through which a certain stream called — runs; or, state the inducement for the contract) in relation to the title, or use, or occupation of which some, or divers suit or suits at law are likely to arise, be brought or commenced. And, whereas, it is agreed by and between the said parties, that if any such suit or suits, action or actions, shall or may be brought, commenced or prosecuted by or against the said parties, any or either of them, at any time or times hereafter, that they and every of them do and shall bear and pay their respective and equal shares and parts of the costs and damages thereof: Now these presents witness, that the said, etc., and every of them, do hereby covenant, promise and agree, to and with each other, that they, the said, etc., and every of them, their and each and every of their executors, administrators and assigns, shall and will pay and bear their respective equal shares and proportions of all costs and damages of all and every such action and actions, suit and

suits (if any) that at any time or times hereafter shall or may be brought by or against them, or any or either of them, on that account.

In witness, etc. (as in form No. 163).

In presence of

G. H.

A. B.

C. D.

E. F.

(Acknowledgment or proof as in chapter 3, forms Nos. 6, etc.)

No. 181.

Agreement for sale of manuscript and copyright of a book.

This agreement, made and entered into this — day of —, in the year 1—, between A. B., of the (city) of —, in the State of —, party of the first part, and C. D. and E. F., composing the firm of C. D. & Co., of the (city) of —, in said State, parties of the second part ;

Witnesseth, that the said party of the first part, for and in consideration of the sum of — dollars to be paid to him by the said parties of the second part, in the manner hereinafter mentioned, agrees with the said parties of the second part, their survivors and assigns, to prepare, compose and write a good, accurate and reliable [law] book, upon the subject of (stating same) [or, entitled (stating title of book)] [including that by public corporations], and to expend in the writing and preparation thereof, his best skill, judgment and literary ability, and therein to fairly and accurately state and define the law applicable to said subject, and to annotate the same with full, copious and accurate references to the reported decisions of the several courts of the various States of the United States of America, and of the United States courts, and to the statutes of the said various States, and to the reported decisions of the courts of Great Britain upon the said subject, and properly arrange them under the respective subdivisions of such subjects, so as to set forth and illustrate the present condition of the law, and decisions upon said subjects, and all the general principles relating thereto],¹ and to prepare a full and accurate index to said

book, a table of contents thereof, and also a table of cases cited, to appropriately divide the book into chapters with proper headings.

The said book shall consist of — pages, including index, but exclusive of table of contents, and of cases when printed.

And the said party of the first part, in consideration aforesaid, agrees promptly to read, examine and correct the proof sheets of the said work as the same shall be printed, and return the copy so read and corrected to the parties of the second part, or to a printer to be designated by them in the State of —, and to complete the manuscript of said book [and all such work and labor] on or before the — day of —, 1—.

And said party of the first part, for himself, his heirs and assigns, further agrees, in consideration aforesaid, to make and execute any and all papers and instruments, and to do all matters and things which may be necessary or proper to secure to said parties of the second part, their survivors or assigns, the perfect copyright and renewals of copyright of and to the said work.

And said parties of the second part hereby agree with said party of the first part, to print with all reasonable dispatch the body of the said work, when the same shall be ready for printing within the term aforesaid, and within six weeks after the body of said work is ready to be printed, to forward the proof sheets thereof in convenient portions and at convenient times, to the said party of the first part, at — aforesaid, for him to read and correct, and also to forward to him at the aforesaid place a copy of the body of the said work as soon as the same shall be printed, or within a reasonable time thereafter, to enable the said party of the first part to prepare the said table of contents, and of cases and the index.

And the said parties of the second part further agree to pay to the said party of the first part, the sum of — dollars, as follows (stating manner of payment), and to deliver to said A. B., his executors, administrators or assigns (fifteen) copies of said book, upon the publication thereof, free of charge.

And it is further agreed by and between the parties hereto, that in case the party of the first part shall fail to perform the matters and things hereinbefore agreed to be done by him, that then he will and shall pay to the parties of the second part the sum of — dollars, as and for liquidated damages for such failure, which damages are hereby fixed at that amount, unless such failure shall be caused by the death of the said party of the first part, or his illness, extending over a space of three months.²

In witness whereof, the said parties have hereunto set their hands, the day and year first above written.

In presence of

A. B.

G. H.

C. D. & Co.

(Acknowledgment or proof as in forms Nos. 6, etc.)

1. Omit these words in brackets and see as to contract for liquidated when the contract relates to a book damages, cases cited in note 3 to other than a law book. form No. 170. See also form No.

2. See notes to last form, No. 180, 233.

No. 182.

Articles of copartnership between two attorneys.

Articles of agreement, made the — day of —, in the year 1 —, between A. B., of, etc., of the first part, and C. D., of, etc., of the second part, (*) attorneys and counselors at law.¹

Whereas, the said A. B., for the consideration hereinafter mentioned, hath agreed to admit the said C. D. to be a co-partner in profit and loss, in the proportions hereinafter mentioned, with him, the said A. B., in the business or profession of an attorney and counselor at law [and of a (solicitor and) conveyancer],² and in all business common or incident thereto, or to either of them, and in all other business that he, the said A. B., shall be concerned or employed in for the term of (ten) years, to be computed from the date of these presents; if both of them, the said A. B. and C. D., shall so long live,³ (**) (or, whereas the said A. B. and C. D. have agreed to form a copartnership for the considerations hereinafter mentioned, in the business and profession of attorneys

and counselors at law [and of (solicitors and) conveyancers], and in all business common or incident thereto, or to either of them, and in all other business that they, the said A. B. and C. D., shall be concerned or employed in for the term, etc. [as above to (**)] the same to be managed and carried on in the joint names of the said A. B. and C. D., at [their office (or, at the office of the said A. B.), No. —, A street in the (city) of —], or at such other place as the same shall be from time to time removed to by their mutual consent, subject to and under the several covenants, provisos and agreements, hereinafter contained.

Now these presents witness, that in pursuance of the said recited agreements, and in consideration that the said C. D. hath agreed (or, that the said A. B. and C. D. have agreed) to employ his whole time (or, their whole time) in the management of the said business, in promoting and conducting the same, to the utmost of his (or, their) skill, he, the said A. B., for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree, to and with the said C. D., his executors and administrators, and the said C. D., for himself, his heirs, etc., doth hereby covenant, promise and agree, to and with the said A. B., his executors, etc., in manner and form following, that is to say, that they, the said A. B. and C. D., shall and will become, continue and be copartners together, under the firm name and style of B. & D., in profit and loss, in the proportion hereinafter mentioned, in the said business or profession of attorneys and counselors (and solicitors) in the carrying on, prosecuting, managing and defending all and every suit and suits at law and in equity (which he, the said A. B., is already concerned in, and) which they, the said A. B. and C. D., or either of them, at any time during the said copartnership, shall be concerned in, and in perusing, drawing and settling all and every such deeds, titles, writings, conveyances and other instruments whatsoever, which they, the said A. B. and C. D., or either of them, shall be employed about during the said copartnership, and all procurations, gratuities, rewards, and in all other business common or incident to the business of an attorney and counselor (solicitor and conveyancer), or in which they, or

either of them, shall be employed (save and except as herein-after mentioned or excepted), for the term of (ten) years, to be computed from the day of the date of these presents, if they, the said parties, shall so long live, to be carried on at the office of the said A. B. and C. D., or other place above mentioned (in the same manner as the same is now carrying on there, and that the said A. B., during so long as the said business shall be carried on in his present, or any other office owned by him hereafter at any time, during the said term of (ten) years be paid and allowed yearly and every year, at and after the rate of — dollars per annum, for and toward the rent and taxes of said office, in the same manner as such business hath been lately carried on there, and for the usual necessary coals, lights and other expenses of said office, incurred personally by him). That neither of them, the said A. B., or C. D., shall or will, at any time during the continuance of this copartnership, carry on, prosecute or defend any suit or suits at law or in equity, or make any conveyances, deeds, writings or securities, or transact or do any other affairs or business incident or belonging to the profession of an attorney and counselor (solicitor or conveyancer) for any profit or advantage on his own separate account, or for any other account than for the joint benefit of the said A. B. and C. D., in the proportion hereinafter mentioned (save and except, etc., which shall be prosecuted and carried on and completed for the sole and separate account and benefit of the said A. B., and the said C. D. is not to have any part or share of the profits which have arisen, or shall arise therefrom). That they, the said A. B. and C. D., shall during this copartnership, and in the end thereof, have, and be entitled to such respective shares, rights and interests in the profits and advantages arising therefrom, and to be made of the said copartnership business as hereinafter mentioned, viz.: (for the first two years of the said term of — years, the said A. B. shall be entitled to two-third parts thereof, and the said C. D. to one-third part thereof. And for the remaining — years of the said term of — years, they, the said A. B. and C. D., shall have, and be entitled to the said

profits and advantages arising from the said copartnership business in equal moieties, share and share alike). And that all debts that they, the said parties, shall owe or contract on account of the said copartnership, and all losses which they shall sustain by reason of the said copartnership business, and all clerks' and writers' salaries, disbursements for counsel fees, and other charges, demands and necessary expenses that shall be occasioned or happen on account of their copartnership, shall be sustained and borne by them, the said A. B. and C. D., respectively, and their respective executors and administrators, in the proportion above mentioned (regard being had to the time when such debts, losses and payment of salaries, and other charges and expenses shall happen to be made or contracted, whether in the first — years or in the last — years of the said term of (ten) years). That all and every sum and sums of money to be advanced by the said parties, for the carrying on the said copartnership, and all and every sum and sums of money that shall be received by either of them, on account of the said copartnership business, or for fees, rewards or gratuities, shall from time to time be deposited and remain in the hands of the said A. B., in trust for the joint use and benefit of both the said parties, according to their respective proportions and interests therein, as before mentioned, and that out of the said money, he, the said A. B., shall and will pay to and supply the said C. D. with all such sum and sums of money as shall from time to time be necessary or expedient for the carrying on and prosecuting the said joint business, or that he, the said C. D., shall expend on account thereof. That for the more easy and better carrying on the said business of the said copartnership, they, the said parties, or one of them, shall and will, from time to time, duly and faithfully enter, or cause to be entered, all sum and sums of money that shall be received for, or on account of the said copartnership business, or for fees, gratuities or rewards, and all sum and sums of money that shall be laid out or expended on account of the said copartnership business in proper books of account, to be kept for that purpose. And, also, that they, the said parties, shall and will keep as many such books of account as

shall be thought necessary for the manifesting the state and proceedings of the said joint business, all which books shall be kept in such place or places at the said office, or such other place as the said joint business for the time being shall be carried on at, where each of the said parties shall from time to time during the said copartnership have free access and recourse to read, peruse, examine and copy out of the same at his pleasure.

And that all such books, and also all books of precedents, papers and vouchers in the proceedings of business, done and effected by the said parties, shall, at the end of the said copartnership, be delivered up to, and become the sole property of, such of the said parties hereto as shall thus continue to be the (solicitor or)⁴ attorney for the parties whose affairs and concerns were principally involved therein.

And that neither of the said parties to these presents shall or will from henceforth, during all the term of the said copartnership, enter into any contract, promise or undertaking to appear and put in bail to the sheriff, or to put in and perfect bail in any court whatsoever, for any person or persons whomsoever, without the consent of the other of the said parties hereto in writing, first for that purpose had and obtained. Nor shall nor will hire, engage into or discharge from their official employ, any clerk or writer, either to be articulated with or without premium, or hired at any salary or wages, without their like mutual consent and privity. That if either of the said parties shall give credit to, or disburse any sum or sums of money for any particular person or persons whomsoever (which he shall have been forewarned of by the other of them not to trust, by a notice or warning in writing), any such party or parties shall alone stand to the loss, hazard and adventure thereof, and the share of the said party in the profit of the said business shall stand charged with the same.

That the said parties shall and will yearly during the said copartnership, on the — day of —, in every year, or within — days after, at the farthest, join in account together in making and stating a true, just, plain and perfect general account and reckoning in writing, of, for and concerning all business and transactions whatsoever, relating to

the said copartnership, and of all sum and sums of money, and other estates, that shall be due and owing, or belonging to them, and of all debts and duties which they, the said parties, shall then owe to any person or persons whomsoever, without fraud or delay, and that the said first general account shall be made up and stated by the said parties, on the — day of —, in the year 1—, or within — days after at the farthest, and that, upon stating and finishing such account as aforesaid, they, the said parties, will use their joint and utmost endeavors to recover, receive and collect in all and every such sum and sums of money as shall appear to be due and owing to them, and after payment and deduction of all sum and sums of money due and owing from the said copartnership (and of such sums as are hereinbefore agreed to be retained as aforesaid), they, the said parties, shall thereupon make a partition and division between them of such part of the clear gains and profits of the said copartnership and joint business, and of all sum and sums of money as shall then be had and gotten, in the shares and proportions hereinbefore mentioned.

That in case of the death of either of the said parties, the survivor shall and will, as soon as conveniently may be after the death of such party, adjust, strike and make up a perfect, true and just account and reckoning, in writing, of all matters and transactions relating to or concerning the said copartnership, and of all such debts as by or to the said copartnership shall be due and owing by reason of the said copartnership, and within six months next after the decease of the party so dying, deliver, or cause to be delivered unto, his executors or administrators, a true statement of such account and reckoning, in writing, and recover, receive and get in, as soon as may be, all and every such debts, sum and sums of money as shall then be owing to the said copartnership, and well and truly pay, or cause to be paid, after a deduction of all debts by them owing on account of the said copartnership, unto the executors or administrators of the party dying, such sum and sums of money as shall be then in hand, at the death of the party so dying, and such part of the outstanding debts as shall appear by the said account, to be so set-

tled on account of the death of such party to be the share of the party so dying, as the same shall from time to time be had, collected, got in and received.⁵ (That all and every sum and sums of money as shall at any time be paid to, or received by either of the said parties, from any person or persons whomsoever, who is or are debtor or debtors of the said A. B., for or on account of any business done and performed, or to be done and performed, shall in the first place be applied toward the discharge of such debt or debts as were due and owing by the said A. B., before the commencement of this copartnership, and the remainder of such sum and sums shall go and be applied to the said copartnership account.)

And lastly, it is hereby covenanted, concluded and agreed, by and between the said parties, that if at any time hereafter, any doubt, question, variance or controversy shall arise between the said parties, during the continuance of this copartnership, or either of them, their or either of their executors or administrators, for, touching or concerning the said copartnership business in any wise, and they cannot of themselves agree and determine the same, then in such case, the said parties, their executors or administrators, respectively, shall and will forthwith nominate and appoint two discreet and indifferent persons to end and determine all matters, differences and controversies then depending between them, one of them to be chosen by each party, or his respective executors or administrators; and in case such two persons cannot agree to determine the matters to them referred, within — days next after the reference, then the same shall be referred to and discussed by such an indifferent person as the said two first referees shall for that purpose nominate or appoint, who shall determine the same within — days next after he shall be appointed umpire, and the said parties, their executors and administrators, shall and will stand to, and perform the award and determination which shall be made by the said arbitrators, or their umpire so to be elected and appointed as aforesaid, so as the said award and determination of the said arbitrators or umpire be made and put in writing under their respective hands and seals, ready to

be delivered to the said parties when they shall require the same of the said arbitrators or umpire. (And further it is agreed that such submission and reference shall from time to time be made by written agreement, made, executed and acknowledged as required by the Code of Civil Procedure of the State of New York.)⁶

In witness, etc. (as in form No. 181).

In presence of

E. F.

A. B.

C. D.

(Acknowledgment or proof as in chap. 3, forms Nos. 6, etc.)

Provision for dissolving the copartnership.

Provided, nevertheless, that in case either of them, the said A. B. and C. D., shall be desirous of dissolving the partnership by these presents entered into, before the said term of (ten) years be expired, and shall give to either of them — months' notice in writing of such his intention (the said — months to end on the — day of —, in the year in which such notice shall be given), that then the copartnership hereby created shall cease, determine and be utterly at an end, any thing herein contained, notwithstanding.⁷

1. By rules of the Court of Appeals of New York, relating to the admission of attorneys and counselors, adopted May 4, 1882, to take effect July 1, 1882, the distinction between the two offices is abolished, and three years' study will entitle the candidate to be admitted as an attorney and counselor. (See Rule 3 of such rules; Hun's Rules, 1888, p. 38.)

2. There is no longer any office of solicitor in New York State, that office having been abolished with the Court of Chancery. A solicitor is defined by Bouvier's Law Dictionary to be a person whose business is to be employed in the care and management of suits depending in courts of chancery.

3. The death of one of the partners operates of itself as a dissolution of the firm, and the administrators, etc., of his estate upon their appointment become tenants in common with the survivors of the partnership property, subject to the right of the surviving partners to its possession and management for the purpose of closing up the partnership affairs. (*Sage v. Woodin*, 66 N. Y. 578, 580; *Williams v. Whedon*, 109 id. 333.)

A provision in a partnership agreement that the death of a member shall not work a dissolution, but that the business shall continue and be conducted by the survivors until a day specified is valid and effectual, it not being beyond the competency of the parties thus to agree. (*Matter of La-*

ney, 50 Hun, 15, overruling *Laney v. Laney*, 6 Dem. 241. See 115 N.Y. 328.)

4. See note 2 to this form.

5. See note 3 to this form.

6. Sections 2365 and 2366 (title 8 of chap. 17) of the Code of Civil Procedure of the State of New York provides as follows, as to submission to arbitration:

§ 2365. A submission of a controversy to arbitration cannot be made, either as prescribed in this title or otherwise, in either of the following cases:

1. Where one of the parties to the controversy is an infant, or a person incompetent to manage his affairs, by reason of lunacy, idiocy, or habitual drunkenness.

2. Where the controversy arises respecting a claim to an estate in real property, in fee or for life.

But where a person, capable of entering into a submission, has knowingly entered into the same with a person incapable of so doing, as prescribed in subdivision first of this section, the objection, on the ground of incapacity, can be taken only in behalf of the person so incapacitated. And the second subdivision of this section does not prevent the submission of a claim to an estate for years, or other interest for a term of years, or for one year or less, in real property; or of a controversy respecting the partition of real property between joint tenants or tenants in common; or of a controversy respecting the boundaries of lands, or the admeasurement of dower.

§ 2366. Except as otherwise prescribed in the last section, two or more persons may, by an instrument in writing, duly acknowledged or proved, and certified, in like manner as a deed to be recorded, submit, to the arbitration of one or more arbi-

trators, any controversy existing between them at the time of the submission, which might be the subject of an action. They may, in the submission, agree that a judgment of a court of record, specified in the instrument, shall be rendered upon the award, made pursuant to the submission. If the Supreme Court is thus specified, the submission may also specify the county in which the judgment shall be entered. If it does not, the judgment may be entered in any county.

Section 2367 provides that where a submission is made as prescribed in this title, an additional arbitrator, or an umpire, cannot be selected or appointed, unless the submission expressly so provides. Where a submission, made either as prescribed in this title or otherwise, provides that two or more arbitrators, therein designated, may select or appoint a person as an additional arbitrator or as an umpire, the selection or appointment must be in writing. An additional arbitrator or umpire must sit with the original arbitrators, upon the hearing. If testimony has been taken before his selection or appointment, the matter must be reheard, unless a rehearing is waived in the submission, or by the subsequent written consent of the parties, or their attorneys.

For forms of proceedings relating to arbitrations under that title, see *Lansing's Forms of Civil Procedure*, Vol. 2, Nos. 1269-1288, and see forms Nos. 167, 168, 169, and forms under title "Award" contained herein.

Section 2366, above cited, is only applicable to submissions made as prescribed in that title. (*Lorenzo v. Deery*, 26 Hun, 447.)

7. This provision is intended to be incorporated into the above agreement, if desired, at the proper place.

No. 183.**Articles of copartnership agreement between two tradesmen.**

As in last form No. 182, to (*), and from thence as follows:

The said A. B. and C. D. have agreed and do agree to become copartners together, under the firm name and style of B. & D., in the art or trade of, etc., and all things thereto belonging, and also in buying, selling, vending and retailing of all sorts of wares, goods and commodities belonging to the said trade of, etc., which said copartnership, it is agreed, shall continue from, etc., for and during, and until the full end and term of (eight) years, from thence next ensuing, and fully to be complete and ended; and to that end and purpose, he, the said A. B., hath, on the day of the date of these presents, delivered in as stock, the sum of — dollars, and the said C. D., the sum of — dollars, to be used, laid out and employed in common between them, for the management of the said trade of, etc., to their utmost benefit and advantage; and it is hereby agreed between the said parties, and the said copartners, each for himself, respectively, and for his own particular part, and for his respective executors and administrators, doth covenant, promise and agree with the other of them, his respective executors and administrators, by these presents, in manner and form following, that is to say:

First. That they, the said copartners, shall not, nor will at any time hereafter, use, exercise or follow the trade of, etc., aforesaid, or any other trade whatsoever, during the said term, to their private benefit or advantage, but shall and will from time to time, and at all times during the said term, if they shall so long live, do their and each of their best and utmost endeavors, in and by all means possible, to the utmost of their skill and power, for their joint interest, profit, benefit and advantage, and truly employ, buy, sell and merchandise with the stock aforesaid, and the increase thereof in the trade of, etc., aforesaid, without any sinister intentions or fraudulent endeavors whatsoever.

Second. And also, that they, the said copartners, shall and will, from time to time, and at all times hereafter, during the said term, pay and bear and discharge equally between them, the rent of the shop, which they, the said copartners, shall rent or hire for the joint exercising or managing the trade aforesaid.

Third. And that all such gain, profit and income that shall come, grow or arise, for or by reason of the said trade or joint business as aforesaid, shall be from time to time, during the said term, equally and proportionately divided between them, the said copartners, share and share alike.

Fourth. And also, that all such losses as shall happen in the said joint trade by bad debts, ill commodities or otherwise, without fraud or covin, and all wages, charges, expenses, purchases and payments, whatsoever, relative to and in the said joint trade, shall be paid and borne equally and proportionately between them.

Fifth. And further, that neither of the said parties hereto shall take any apprentice into the said joint trade without their mutual consent, and that all apprentice fees to be received by them, or either of them, shall be carried to their joint account.

Sixth. And that neither of the said parties shall or will sign and execute or deliver any bond, judgment, or warrant of attorney to enter up judgment, nor give, sign, indorse, draw or accept any bill of exchange or promissory note whatsoever, whereby the said joint trade can be affected in any manner howsoever, or without the consent of the other of the said parties being first obtained, or the same being duly entered, in case of the absence of the other of the said parties, into the proper book or books of the transactions of the said copartnership, or use or employ the firm name of the said copartnership in any transactions of notes or bills for accommodation in any manner howsoever, or become bail to the sheriff, or in any court of law or judicature whatsoever, for any person or persons whomsoever.

Seventh. And further that no importation or large purchase of goods or other things shall be made, nor any transaction out of the usual course of the retail business shall be

undertaken by either of the partners, without previous consultation with, and the approbation of, the other partner.

Eighth. Neither party shall withdraw from the joint stock, at any time, more than his share of the profits of the business then earned, nor shall either party be entitled to interest on his share of the capital; but if, at the expiration of the year, a balance of profits be found to either partner, he shall be at liberty to withdraw the said balance, or to leave it in the business, provided the other partner consent thereto, and in that case he shall be allowed interest on the said balance.

And further, it is agreed, by and between the said copartners, that there shall be had and kept, from time to time, and at all times during the said term and joint business and copartnership together, as aforesaid, perfect, just and true books of accounts, wherein each of the said copartners shall duly enter and set down as well all money by him received, paid, expended and laid out, in and about the management of the said trade, as also all wares, goods, commodities, and merchandises by them, or either of them, bought and sold by reason, or means, or upon account of the said copartnership, and all other matters and things whatsoever to the said joint trade, and the management thereof, in any wise belonging or appertaining; which said books shall be used in common between the said copartners, so that either of them may have free access thereto without any interruption by the others.

Ninth. And also, that they, the said copartners, once in three months, or oftener if need shall require, upon the reasonable request of one of them, shall make, yield and render each to the other, or to the executors or administrators of each other, a true, just and perfect account of all profits and increase by them, or either of them, made, and of all losses by them, or either of them, sustained, and also of all payments, receipts, disbursements and all other things whatsoever by them made, received, disbursed, acted, done or suffered in the said copartnership and joint business as aforesaid, and the same account so made shall and will clear, adjust, pay and deliver each unto the other, at the time of

making such account, their equal shares of the profits so made as aforesaid.

Tenth. And at the end of said term of (eight) years, or other sooner determination of these presents, be it by the death of one of the copartners or otherwise,¹ they, the said copartners, each to the other, or in case of the death of either of them, the surviving party to the executors or administrators of the party deceased, shall and will make a true, just and final account of all things as aforesaid, and divide the profits as aforesaid, and in all things well and truly adjust the same, and that also upon the making of such final account, all and every the stock and stocks, as well as the gains and increase thereof, which shall appear to be remaining, whether consisting of money, wares, debts, etc., shall be equally parted and divided between the said copartners, their executors or administrators, share and share alike; and if the said parties, or their legal representatives, cannot agree in the division of the stock then on hand, the whole copartnership effects, except the debts due the firm, shall be sold at public auction, at which both parties shall be at liberty to bid and purchase like other individuals, and the proceeds shall be divided, after payment of the debts of the firm, in the proportions aforesaid.

Eleventh. For the purpose of securing the performance of the foregoing agreements, it is agreed that either party, in case of violation of them, or either of them, by the other, shall have the right to dissolve this copartnership forthwith, on his becoming informed of such violation.

(Insert clause for arbitration, if desired, like that contained in last form.)²

In witness, etc. (as in form No. 181.)

In presence of
E. F.

A B.
C. D.

(Acknowledgment or proof as in chap. 3, forms Nos. 6, etc.)

1. See note 3 to last form, No. 182.

2. See as to arbitration, note 6 to last form, No. 182

No. 184.**Agreement for dissolution of a copartnership.**

This indenture made this — day of —, in the year 1—, between A. B. of the one part, and C. D. of the other part.

Whereas, by indenture, dated on the — day of —, in the year 1—, it was covenanted and agreed, that the said A. B. and C. D. should become partners and joint traders together, under the firm name and style of A. B. & Co., in the art and trade of —, for the term of — years, from the — day of —, then next ensuing, upon a joint (and equal) capital, to be made up between them, upon and subject to the terms and conditions in the said indenture particularly mentioned, as in and by said indenture will more fully and at large appear. And, whereas, the said A. B. and C. D. have mutually consented and agreed to dissolve the said copartnership, on the — day of —, next ensuing the date of these presents, and that the said A. B. shall quit and give up the said trade to the said C. D., and also the said joint stock, upon the terms and conditions hereinafter mentioned, expressed and declared. And, whereas, all accounts relative to the receipts and disbursements on account of the said joint trade, and of all sums of money advanced and paid by the said parties, have been settled and adjusted up to the day of the date hereof, and upon such account there appears to be due and owing from the said A. B. to the said C. D. the sum of — dollars. And, whereas, the said joint stock in trade has been valued and appraised at the sum of — dollars, one moiety or half part whereof the said C. D. is entitled to, and the said A. B. has agreed to secure the payment of the said sum of — dollars, and the sum of — dollars, being one-half part of the value of the stock in trade to the said C. D. And, whereas, it also appears that there is due and owing to the said copartnership estate, from sundry persons, the sum of — dollars, and that the said copartnership estate stands indebted to sundry persons in the sum of — dollars:

Now, this indenture witnesseth, that the said A. B. and C. D., in pursuance and performance of the said agreement, for themselves, their executors and administrators, have covenanted and agreed, and by these presents do covenant and agree, to and with each other, their executors and administrators, that the said copartnership trade, and all dealings and transactions relative thereto, shall, from the said — day of —, next ensuing the day of the date of these presents, cease and determine, and that the said indenture of copartnership, and every covenant, article, clause and agreement therein contained, as to the residue of the said term, shall from thenceforth cease and determine, and be absolutely void. And it is further covenanted and agreed, that the said trade and business shall be exercised and carried on from the said — day of —, by the said A. B., and in his own name and for his own benefit only and at his own risk, and that the name of the said C. D. shall not be made use of in the said trade from that time, and that the said C. D., his executors or administrators, shall not be entitled to any subsequent profits or subject to any losses that may arise thereby.

And it is further covenanted and agreed that the said A. B. shall collect, receive and get in all debts due and owing to the said copartnership, and shall and will from time to time, as such debts shall be received and got in, pay and apply the same toward the discharge of all demands on the said copartnership, and after such payment, shall and will, out of the surplus thereof, pay to the said C. D., his executors or administrators, the share or interest of the said C. D. therein and thereto, as the same shall be made to appear by the accounts of the said copartnership.

And for the better enabling the said A. B. to collect, receive and get in the debts due and owing to the said copartnership, the said C. D. doth hereby authorize and empower the said A. B. to ask, demand, sue for, levy, recover and receive the same, and to take all lawful ways and means to compel the payment thereof.

And the said A. B. for the considerations aforesaid, doth hereby covenant and agree, to and with the said C. D., that

the said A. B. shall and will, by one bond or obligation, become bound for payment of the sum of — dollars (being one moiety of the valuation of the said stock in trade), with interest for the same after the rate of (six) dollars, per centum per annum, in manner following (that is to say), — dollars and interest, part thereof, on the — day of —, 1—, and the further sum of — dollars and interest, on every succeeding — day of the month, till the whole sum of — dollars shall be fully paid and satisfied; and also, shall and will procure three sufficient and responsible persons, who shall become bound with the said A. B. by one other bond or obligation, in the penal sum of — dollars, conditioned for the payment of — dollars (being the sum hereinbefore mentioned to be due to the said C. D., on settling accounts as aforesaid), with interest for the same, after the rate of (six) per centum per annum, in manner following, that is to say: the sum of — dollars, part thereof, and interest on the — day of — next ensuing, and the further sum of — dollars and interest, on every succeeding — day of the month, till the whole sum of — dollars shall be fully paid and satisfied.

And it is hereby further covenanted that the said joint stock in trade shall, from the said — day of —, become, remain and continue the sole property of the said A. B., in case the said A. B. shall have executed and delivered such bonds to the said C. D., with such conditions as are hereinbefore set forth, and from the execution thereof. And the said C. D., for himself, his executors and administrators, doth hereby covenant and agree to and with the said A. B., his executors and administrators, to grant to the said A. B., his executors, administrators and assigns, a lease of the said messuage, warehouse and premises in which the said joint trade has been carried on for the term of — years from the said — day of —, at the yearly rent of — dollars, in which lease shall be contained common and usual covenants.

And finally, the said parties hereto do hereby mutually covenant and promise, the one unto the other of them, to sign and cause to be inserted in the — and such other public newspapers as shall be thought expedient, and as either

of them shall require, due notice of the said dissolution of their said copartnership, and such other notification thereof, by letters or otherwise, as may be found necessary.¹

In witness, etc. (as in form No. 181).

In presence of

E. F.

A. B.

C. D.

(Acknowledgment or proof as in chap. 3, forms Nos. 6, etc.)

1. It is necessary that actual notice of the retirement of one of the members of a copartnership should be given to those who have given credit to the firm, to protect the retiring partner from liability to such persons as to subsequent transactions with the other members in the name of the firm. (*Clapp v. Rogers*, 12 N. Y. 283.)

It seems, that it is not requisite that persons who have had no dealings with a copartnership, except to sell its property for cash paid on its delivery, should be notified of its dissolution to protect its members from liability. (*Id.*)

See, further, as to who are to be considered dealers with the firm, so as to be entitled to notice of its dissolution in order to protect the several partners from liability for subsequent dealings had with them by the firm, *National Shoe and Leather Bank v. Herz* (24 Hun, 260; *aff'd*, S. C., 89 N. Y. 630); *Forbes v. Garfield* (32 Hun, 389); *Merritt v. Williams* (17 Kans. 287); *Austin v. Holland* (69 N. Y. 571; S. C., 25 Am. Rep. 246); *Dailey v. Blake* (35 N. H. 9).

A retiring partner is liable for services rendered subsequent to the dissolution of the partnership by an agent in its employment at that time, and who, thereafter, without notice of the dissolution, continues under the same apparent employment. (*Austin v. Holland*, *supra*.)

Publication of notice of the dissolution of a partnership in a newspaper, at the place where the business is carried on, is not sufficient to relieve a retiring partner from liability for subsequent transactions in the firm name, with one having dealings with the firm prior to the dissolution; in such case notice must be brought home to the dealer, or it must appear that facts have come to his knowledge sufficient to advise him, or to give him reason to believe that a dissolution has taken place. (*Id.*)

Such publication is sufficient notice however, to all persons not having had prior dealings with the firm. (*Id.*)

The mailing of a notice of dissolution, properly directed to the party sought to be charged with notice, is not sufficient alone to relieve the retiring partner; it raises a presumption of notice, but one which may be repelled by proof that the notice was not in fact received. (*Id.*)

Where a change has been made in the proprietorship of a business, it is not necessary, in order to charge a customer with notice of the retirement of one with whom he has been accustomed to deal, that notice of the change should be positive and explicit, but it must be sufficient to put the former upon inquiry, in order to relieve the former proprietor from liability upon the new transactions. (*Lewis v. Shepard*, 35 N. Y. State Rep. 378; S. C., 12 N. Y. Supp. 209.)

No. 185.**Dissolution of copartnership indorsed on original articles.**

It is hereby agreed between the parties to the within articles of agreement, dated —, 1—, that the copartnership mentioned in said articles (*) is hereby dissolved (from the — day of — next), and that either one of the partners (or, that A. B., one of the partners) is authorized to receive money, and to compromise claims due the said copartnership, and to give receipts and acquittances therefor [and, it is further agreed that (stating any further terms of the dissolution.)]¹

Dated — —, 1—.

A. B.

C. D.

(Acknowledgment or proof, as in chap. 3, forms Nos. 6, etc.)

1. See notes to last form, No. 184.

No. 186.**Agreement continuing partnership, indorsed on original articles.**

As in form No. 185, to (*) and from thence as follows: be and the same is hereby agreed to be continued between said partners for the further term of — years from and after the — day of —, 1—, upon the same terms, conditions, covenants and provisions as are contained in the said articles [except (state any changes in original terms, etc.)].

Dated — —, 1—

A. B.

C. D.

(Acknowledgment or proof as in chap. 3, forms Nos. 6, etc.)

No. 187.**Articles of agreement between a merchant and his clerk.**

Articles of agreement made this — day of —, in the year 1—, between A. B., of, etc., of the first part, and C. D., of, etc., of the second part.

The said C. D., for the considerations hereinafter mentioned, doth hereby for himself, his executors and administrators, covenant, promise and agree, to and with the said A. B., his executors and administrators, by these presents, that he, the said C. D., shall and will, during the space of (five) years, to commence from the day of the date hereof (dwell, continue and abide in the house of the said A. B., and) diligently and faithfully serve the said A. B. during the said term (in keeping the books of account of him, the said A. B., and) in such (other) employment, business and affairs as he, the said A. B., shall think proper to employ him in during the said term, and therein shall, from time to time, and at all times during the said term, observe, fulfill and keep the lawful and reasonable commands and directions of the said A. B., without disclosing the same or the secrets of his employment, business or dealings to any person or persons whomsoever, during the said term, and shall not at any time hereafter during the said term correspond with any person or persons corresponding with the said A. B., nor use any traffic or dealing in the way of the said A. B., either for himself or for any other person or persons other than the said A. B., without the permission and consent of the said A. B. first had and obtained for that purpose.

And the said C. D., for himself, his executors and administrators, doth hereby further covenant, promise and agree to and with the said A. B., his executors and administrators, that he, the said C. D. (will from time to time, during the said term, write and keep a true and perfect account and accounts for him, the said A. B., and) will not embezzle, purloin, willfully waste or misspend any of the goods, wares, moneys, merchandise and commodities of the said A. B. (his servants, family, or any of them).

And also shall and will, upon every request to him made for that purpose, make and give unto the said A. B., his executors or administrators, a full, true, just and perfect account in writing of and for all money which he shall receive in or pay out of all goods and commodities which he shall at any time during the said term receive in or deliver or

pay out, for or upon the account and for the use or by the order of the said A. B.

And also, that he, the said C. D., his executors or administrators, shall and will well and truly pay, or cause to be paid, unto the said A. B., his executors or administrators, all such sum or sums of money as shall appear to be due upon the foot of any such account or accounts.

And further, that he, the said C. D., shall not, nor will at any time or times during the said term, trust or deliver forth, or pay upon credit, any of the goods, wares, merchandises, moneys or securities of or belonging to or in the hands, custody or power of the said A. B., to any person or persons whomsoever, without the previous consent and direction of the said A. B.

In consideration of all which said services, to be observed, done and performed by the said C. D., as aforesaid, he, the said A. B., doth hereby covenant and promise, for himself and his executors and administrators, that he, the said A. B., shall and will pay, allow and give unto him, the said C. D., the sum of — dollars, by the year, for every year during the aforesaid term of (three) years, by even (quarterly) payments, the first (quarterly) payment thereof to be made on the (fifth) day of (July), 1—; (and shall and will, during all the said term, find and provide for the said C. D. sufficient meat, drink, lodging and washing).

And finally, it is hereby mutually agreed, by and between the said parties to these presents, that it shall be at all times in the option and power of the said A. B. to put an end to this agreement, and to the said term of service hereby contracted, by giving to the said C. D. (three months') notice thereof in writing, under the hand of him, the said A. B., any thing heretofore contained notwithstanding.

In presence of

E. F.

A. B.

C. D.

(Acknowledgment or proof as in chap. 3, forms Nos. 6, etc.)

No. 188.

Memorandum on a sale of wheat.

It is agreed by and between E. F. and G. H., of, etc., that he, the said G. H., in consideration of three hundred bushels of wheat, sold to him this day by the said E. F., and by him agreed to be delivered to the said G. H., free of all charges and expenses whatsoever, at, etc., on or before the, etc., next, shall and will pay, or cause to be paid, to the said E. F., or his assigns, within three months after such delivery, the sum of —.

And the said E. F., in consideration of the agreement aforesaid, of the said G. H., doth promise and agree, on or before, etc., aforesaid, at his own proper expenses, to send in and deliver to the said G. H., or his assigns, the said three hundred bushels of wheat so sold him as aforesaid, and that he, the said E. F., shall and will warrant the same to be good, clean and merchantable grain.

In witness whereof, etc. (as in form No. 181).¹

In presence of

A. B.

E. F.

G. H.

(Acknowledgment or proof as in chap. 3, forms Nos. 6, etc.)

1. By the New York Revised Statutes it is provided that every contract for the sale of any goods, chattels or things in action, for the price of \$50 or more, shall be void, unless,

First. A note or memorandum of such contract be made in writing, and be subscribed by the parties to be charged thereby; or,

Second. Unless the buyer shall accept and receive part of such goods, or the evidences, or some of them, of such things in action; or,

Third. Unless the buyer shall, at the time, pay some part of the purchase-money. (2 N. Y. Rev. Stat. 136; 7th ed. 2328.)

See also *Crane v. Powell* (139 N. Y. 379); *Cameron v. Tompkins* (72 Hun, 113); *Cheever v. Schall* (87 id. 32).

No. 189.

Articles of marriage.

Articles of agreement of three parts, made this — day of —, 1—, between A. B., of, etc., of the first part, E.

D., of, etc., of the second part, and C. D., of, etc. (and E. F., of, etc.), of the third part, as follows: Whereas, the said E. D. is seized to her, and to her heirs in fee-simple, of and in certain lands, messuages and tenements, with their appurtenances, described as follows, to-wit: All that certain lot, etc., situate, lying and being, etc. (describing same), and is also seized of certain personal property, to-wit: (describing the same).

And, whereas, a marriage is shortly intended to be had and solemnized between the said A. B. and E. D.

And, whereas, it has been agreed between the said A. B. and E. D., that said estate shall be settled upon the trusts, and for the uses and purposes hereinafter declared (*). It is, therefore, covenanted and agreed, by and between the said parties to these presents, in manner and form following, that is to say: First, the said A. B., for himself, his heirs, executors and administrators, doth covenant and agree to and with the said C. D. (and E. F.), his (or, their) heirs and assigns, that they, the said A. B. and E. D., his intended wife, in case the said intended marriage shall be had and solemnized, by some good and sufficient conveyance or conveyances in the law, shall settle and assure all these lands, messuages or tenements, with the appurtenances and personal property whereof she, the said E. D., is seized as aforesaid, on and to the said C. D. (and E. F.), to the use and behoof of the said A. B., and his assigns, during the term of his natural life; and from and after the decease of the said A. B., then to the use and behoof of the said E. D., his said intended wife, for and during the term of her natural life; and from and after her decease, then to the use and behoof of the heirs of the body of the said E. D. by the said A. B., lawfully to be begotten, and for the default of such issue, then to the use and behoof of the said E. D., her heirs and assigns forever, and to and for no other use, intent or purpose whatsoever.

And, whereas, the said E. D. is also possessed of, or interested in, for the remainder of a term of — years (if she shall so long live), all that messuage or tenement, with the

appurtenances, situate, etc. (describing property), by virtue of a certain indenture of lease thereof granted to the said E. D., by L. M., of, etc.: Now the said A. B., for himself, his heirs and executors, doth further covenant, grant and agree, to and with the said C. D. (and E. F.), his (or, their) heirs and assigns, that they, the said A. B., and E. D., his said intended wife (in case the said marriage shall take effect), shall and will, by like good and sufficient conveyances in the law, settle and assure the said messuage or tenement, with the appurtenances, in such manner as that the same may be held and enjoyed, and the rents and profits thereof may be had, received and taken by the said A. B. and his assigns, during so many years of the said term as he shall happen to live; and from and after his decease, then by the said E. D., his said intended wife and her assigns, for and during so many years of the said term as she shall happen to live; and from and after her decease, then by such children of the said E. D. by the said A. B. to be begotten, in such manner as it may not be in the power of the said A. B. to defeat such, their issue; and for default of such issue, then by the executors, administrators or assigns of the said E. D., and upon no other trust, and to and for no other use, intent or purpose whatsoever.

And forasmuch as the said A. B. is not at present seized or possessed of any estate sufficient to make a jointure for the said E. D., his intended wife, equivalent to her fortune, the said A. B. doth, for himself, his heirs, executors and administrators, covenant, grant and agree, to and with the said C. D. (and E. F.), his (or, their) heirs and assigns, that in case the said intended marriage shall take effect, and he, the said A. B., shall happen to die in the life-time of the said E. D., that then he, the said A. B., shall and will, by his last will and testament, in writing or otherwise, give and assure unto the said E. D. the sum of — dollars, of lawful money of the United States, or the full value thereof in lands, tenements, goods or chattels, to be at her own proper disposal,

and to be by her received and taken to her own proper use and benefit.¹

In witness, etc. (as in form No. 181).

A. B. [L. S.]

E. D. [L. S.]

C. D. [L. S.]

[E. F.] [L. S.]

(Acknowledgment or proof as in chap. 3, forms Nos. 6, etc.)

1. See next form, No. 190, for a married woman by a marriage settlement, by which the entire legal estate is vested in trustees. (Wright

A power, general or special, beneficial or in trust, may be reserved to v. Tallmadge, 15 N. Y. 307.)

No. 190.

Articles of marriage, another form.

As in last form, No. 189, to (*) and from thence as follows :
Now, therefore, in consideration of the said intended marriage and of the sum of one dollar to the said party of the second part in hand paid by the said party (or, parties) of the third part, the receipt whereof is hereby acknowledged, the said party of the second part hath granted and conveyed, and by these presents doth grant and convey unto the said party (or, parties) of the third part, his (or, their) successors and assigns, all and singular the above-mentioned and described premises upon the following trusts, viz.: For the use and benefit of the said E. D., until her said intended marriage shall take place, and from and after the solemnization thereof, then upon trust, from time to time to apply to the use of the said E. D., all the interest, dividends and annual produce thereof, during the joint lives of the said A. B. and E. D., to her own proper use and benefit, and upon her own proper receipt for the same, notwithstanding her coverture, to the intent that the same may not be at the disposal or under the control of the said A. B., or in any manner subject to his debts and engagements; and from and immediately after the decease of the said A. B., in case the said E. D. shall survive him, then upon trust for the use and benefit of the said E. D., her executors, administrators and assigns, and upon trust in such case to grant and convey the trust estate

and every part thereof, to the said E. D., absolutely, or to grant and convey the same to such person or persons as she, by any writing to be by her duly executed, may limit, direct and appoint; but in case the said A. shall survive the said E., then upon trust, from and immediately after her decease, to apply to the use of the said A., all the interest, dividends and annual produce thereof, from time to time, during his natural life, to and for his own use and benefit; and on the decease of the said A., to pay and divide the capital or principal of the said trust fund, and to grant and convey all her real estate to and among the lawful children of the said E. and their issue, in such proportions, shares, manner and form, as she, by any writing under her hand subscribed in the presence of two or more witnesses, shall direct and appoint; and for want of such appointment, to and among the children of the said E., and the lawful issue of such of them as may be deceased, according to the rules of descent and of distribution in cases of intestacy. But if there shall be no issue of the said E. then surviving, then, upon trust, to pay and dispose of the said capital or principal, and grant and convey the said real estate, according to the direction and appointment of the said E.; and for want of such appointment to and among her three surviving nephews and nieces, children of her sisters and the lawful issue of such of them as may be deceased, according to the like rule of descent and distribution. And the said C. D. (and E. F.) may upon the request of said E., in writing, sell and convey any part of the said estate or the whole thereof, upon such terms as she shall direct, and may receive and invest the proceeds thereof, for the like uses and purposes hereinbefore declared with respect to the property hereby conveyed.¹

In witness whereof (as in form No. 181).

A. B. [L. S.]

E. D. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

(Acknowledgment or proof as in chap. 3, forms Nos. 6, etc.)

1. This form is from the case of *Wright v. Tallmadge*, 15 N. Y. 307. For another form of marriage settlement see last form, No. 189. See, also, note 1 to that form; and see *Genet v. Hunt* (113 N. Y. 158).

No. 191.**Articles of separation between husband and wife.**

This indenture of three parts, made between G. G., of —, of the first part, A., his wife, of the second part, and B. (a trustee) of the third part. Whereas, etc. (here insert recital of the settlement before marriage, if any such marriage settlement there be), and whereas, some unhappy differences have lately arisen between the said G. G., and A., his wife, and they have mutually agreed to live separate and apart from each other; and previous to such separation, he, the said G. G., hath consented thereto, and also proposed and agreed that he, out of his own proper moneys, would allow and pay to the said A., his wife, during the term of her natural life, for her better support and maintenance (over and above the provision made and settled upon her, the said A., for her separate use, by the above-recited indenture), one annuity or yearly sum of —, clear of all taxes, charges and deductions whatsoever, payable to her in such manner as hereinafter is mentioned, subject, nevertheless, to the provisions hereinafter contained, touching the payment of the said annuity; and, also, that in case the said A., his wife, should die before him, the said G. G., that then the said G. G. should pay to her executors the sum of — dollars toward her funeral charges, and that the said G. G. would hereby ratify and confirm the hereinbefore-received settlement in such manner as hereafter is mentioned: Now this indenture witnesseth, that the said G. G., in pursuance of his aforesaid proposal and agreement, doth hereby for himself, his executors, administrators, and for every of them, covenant, promise and agree, to and with the said B. (the trustee), his executors, administrators and assigns, and doth also agree with the said A., his wife, in manner and form following, that is to say, that it shall and may be lawful to and for the said A., his wife, and that he, the said G. G., shall and will permit and suffer her, the said A., from time to time, and at all times from henceforth, during her natural life, to live separate and apart from him, and to reside and be in such place and places, and in such family and families, and

with such relations, friends and other persons, and to follow and carry on such trade and business, as she, the said A., from time to time, at her will and pleasure (notwithstanding her present coverture, and as if she were a *feme sole* and unmarried), shall think fit; and that he, the said G. G., shall not, nor will at any time or times hereafter, sue her, the said A., in any court, for living separate and apart from him, or molest, disturb or trouble her for such living separate and apart from him, nor sue, molest or trouble any other person or persons whomsoever, for receiving, harboring or entertaining her; nor shall or will, without the consent of the said A., visit her, or knowingly come into any house or place where she shall or may dwell, reside or be; or send, or cause to be sent, any letter or message to her; nor shall or will, at any time hereafter, claim or demand any of the money, rings, jewels, plate, clothes, linen, household goods or stock in trade, which she, the said A., has now in her custody, power or possession, or which she shall or may, at any time hereafter, buy or purchase, or which shall be devised or given to her, or she shall otherwise acquire, and that she shall and may enjoy and absolutely dispose of the same, as if she were a *feme sole* and unmarried. And further, that he, the said G. G., his executors or administrators, or some or one of them, shall and will well and truly pay, or cause to be paid, unto the said A., his wife, or her assigns, during the term of her natural life, for and toward her better support and maintenance, one annuity or yearly sum of —, of lawful money of the United States, free and clear of all taxes, charges and deductions whatsoever; the said annuity or yearly sum of — to be paid and payable to her, the said A., and her assigns, during her natural life, at or upon the first days of (naming the months), or within ten days next after each of the said days, by four equal parts; the first quarterly payment thereof to begin and be made on the first day of (naming month) next, or within — days next following, which — dollars per annum, so hereby made payable to her, the said A., in manner as aforesaid (and the provision so made for her by the said recited indenture of settlement in manner as aforesaid), she, the said A., doth hereby agree

to accept and take in full satisfaction for her support and maintenance, and all alimony whatsoever during her coverture. Provided always, and it is hereby expressly agreed and declared, by and between all the parties hereunto, and the true intent and meaning of them and these presents is and are, that in case he, the said G. G., his executors or administrators, shall at any time hereafter be obliged to, and shall actually pay any debt or debts which she, the said A., his wife, shall at any time hereafter during her present coverture, contract with any person or persons whatsoever, that then and in such case, it shall and may be lawful to and for the said G. G., his executors and administrators, to deduct, retain and reimburse to him and themselves out of the said annuity or yearly sum of — dollars, so hereby made payable to her, the said A., as aforesaid, all and every such sum or sums of money as he or they shall be obliged to, and shall so actually pay for or on account of such debt or debts to be by her, the said A., at any time hereafter so contracted as aforesaid, together with all costs, charges and damages which he or they shall or may pay or sustain on account thereof; any thing herein contained to the contrary thereof, notwithstanding. And the said B. (the trustee), in consideration of the sum of one dollar, to him duly paid, doth covenant and agree to and with the said G. G. that he will, provided the said G. G. performs all the agreements herein entered into by him, indemnify and save him harmless of and from all debts of said A., his said wife, contracted, or that may hereafter be contracted by her, or on her account; and if the said G. G. shall be compelled to pay any such debt or debts, the said B. hereby agrees to repay the same, on demand, to the said A. B., with all loss and damage that he may sustain thereby. (And lastly, the said G. G. (in pursuance and full performance of his said recited agreement, and divers other good and valuable causes and considerations, him thereunto especially moving), hath, and by these presents doth absolutely establish, ratify and confirm, as well the said hereinbefore recited indenture of assignment and settlement made of the said personal estate of the said A., his wife, and of the said — and gold watch by the said G. G. and A., his wife,

so thereby respectively assigned to them, the said G. G. and J. B. (the trustees) as aforesaid, and all and every the several trusts, uses, declarations, conditions and agreements in the same indenture mentioned, limited, expressed and declared of and concerning the same respectively.)

In witness whereof, etc. (as in form No. 181).¹

G. G. [L. S.]

A. G. [L. S.]

B. B. [L. S.]

Sealed and delivered in presence of

E. F.

(Acknowledgment or proof as in chap. 3, forms Nos. 6, etc.)

1. As to the validity of an agreement for present separation between husband and wife, or relating to one that has already taken place, and for a separate maintenance to the wife, through the medium of a trustee, see *Carson v. Murray* (3 Paige, 483); *Rogers v. Rogers* (4 id. 516); *Florentine v. Wilson* (Hill & D. Supp. 303); *Beach v. Beach* (2 Hill, 260); *Champlin v. Champlin* (Hoffm. 55); *Mann v. Hulbert* (38 Hun, 27); *Calkins v. Long* (22 Barb. 97, 106); *People v. Mercein* (3 Hill, 399, 411); *Wallace v. Bassett* (41 Barb. 92); *Dupre v. Rein* (56 How. 228); *Morgan v. Potter* (17 Hun, 403); *Magee v. Magee* (67 Barb. 487); *Allen v. Affleck* (14 N. Y. Week. Dig. 536); *S. C.* (64 How. 380; 4 Am. Law Rev., N. S. 78); *Zimmer v. Settle*, (19 id. 245); *Stratton v. Stratton* (Me., 1885, 20 Rep. 555); *Clark v. Fosdick* (1 N. Y. State Rep. 90); *Carpenter v. Osborn* (102 N. Y. 552); *Pettit v. Pettit* (107 id. 677); *Talinger v. Mandeville* (48 Hun, 152; aff'd, 113 N. Y. 427); *Galusha v. Galusha* (116 id. 235); *Clark v. Fosdick* (118 id. 77).

An agreement for a separation cannot be supported, unless the separation has already taken place, or is to

take place immediately upon the execution of such agreement. (*Carson v. Murray*, *supra*.)

Subsequent cohabitation operates as a revocation of articles of separation, and avoids a security given for separate maintenance. (*Shelthar v. Gregory*, 2 Wend. 422; *Carson v. Murray*, 3 Paige, 483.)

A stipulation in the articles of separation reserving to the parties the right of visiting each other, in case of sickness, by mutual consent, if not afterward carried into effect will not render the agreement void. (*Carson v. Murray*, 3 Paige, 483.) See also *Heyer v. Burger* (Hoffm. 1); *Duryea v. Bliven* (14 N. Y. State Rep. 881).

The obligation of a husband to pay a stipulated sum for the support of the wife under a separation agreement is not terminated by the wife's recovering a divorce in another State for a cause existing prior to the execution of such agreement, where the agreement itself does not contain any provision to that effect. (*Clark v. Fosdick* [N. Y. Com. Pl., 1886], N. Y. State Rep. 90; aff'd, S. C., 118 N. Y. 77). See also *Carpenter v. Osborn* (102 N. Y. 552).

No. 192.

Jointure in lieu of dower right.

It is hereby agreed as follows, between A. B., of —, of the first part, C. D., of —, of the second part, and E. F., of —, of the third part, as follows:

First. The said A. B. doth hereby covenant and agree to and with the said C., his heirs and assigns, in consideration of a marriage about to be contracted between him and the said E., that he, the said A. B., his heirs and assigns, shall and will forever hereafter stand seized of and in that certain tract, piece or parcel of land, with the appurtenances, situate, etc. (describing premises), to the following uses, viz.: to the use of the said A., for and during his natural life, and after his marriage with the said C., and after his decease, to the use of the said C., during her natural life (or, so long as the said C. shall remain his widow), for her jointure, and in full satisfaction of her entire dower in his estate after his decease, and at the expiration of her estate, to the use of his heirs and assigns forever.

Second. The said E., in consideration of the premises and of one dollar to her in hand paid, hereby covenants and agrees with the said A. that the lands so assigned and set apart to her shall be in full satisfaction of her dower or claim of dower in his, the said A.'s estate, and shall bar her from making claim to any dower, if she shall survive him after said marriage, and that she will not claim any share in his personal estate unless the said A. shall give her some part thereof by his will, or by some act done by him subsequent to the execution of these presents.

In witness whereof, the said parties have hereunto set their hands and seals, on this — day of —, in the year 1—.¹

A. B. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment or proof as in chap. 3, forms Nos. 6, etc.)

1. The New York Revised Statute, that whenever an estate in lands shall be conveyed to a person and his

intended wife, or to such intended wife alone, or to any person in trust for such person and his intended wife, or in trust for such wife alone, for the purpose of creating a jointure for such intended wife, and with her assent, such jointure shall be a bar to any right or claim of dower of such wife in any lands of the husband (1 N. Y. R. S. 741, § 9; 7th ed., 2197). The assent of the wife to such jointure shall be evidenced, if she be of full age, by her becoming a party to the conveyance, by which it shall be settled; if she be an infant, by her joining with her father or guardian in such conveyance. (Id., § 10.)

A jointure is defined to be a competent livelihood of freehold for the wife, of lands and tenements; to take effect in profit or possession, presently after the death of the husband, for the life of the wife at least. (Bouv. L. Dict., title "Jointure;" Cruise's Dig., tit. 7; 2 Bl. Com. 137.) In its more enlarged sense, a jointure signifies a joint estate limited to both husband and wife. (Id.)

Under the provisions of the statute of 27 Henry VIII, c. 10, commonly called the Statute of Uses, and the decisions made thereunder, by the rules contained in which jointures are still generally regulated, in order to make a good jointure it must take effect in possession or profit immediately from the death of the husband; it must be for the wife's life, or for some greater estate; it must be limited to the wife herself and not to any other person in trust for her; it must

be made in satisfaction of the wife's whole dower, and not of part of it only; the estate limited to the wife must be expressed or averred to be in satisfaction of her whole dower; and it must be made before marriage. (Id.)

It will be observed that in addition to the other modifications made by the New York statute above recited, the provisions in regard to the jointures not being made in trust for the wife, are abrogated by those statutes. This rule of law was deduced from the said statute of Henry VIII. A conveyance to trustees for the use of the wife after her husband's death is, in point of law, no jointure; but such a settlement, if in other respects good, will be enforced in chancery as an equitable bar of dower; and courts of equity have greatly relieved the parties from the strict legal construction given to the English statute. See 4 Kent's Com. 55.

An agreement made during coverture between a husband, his wife, and a trustee of the latter, that in consideration of her enjoying separately and absolutely controlling her separate property, she would relinquish her dower in his lands, is invalid, and cannot be enforced against her in an action for her dower. (Townsend v. Townsend, 2 Sandf. 711.)

See, also, the further provisions of the New York Revised Statutes on this subject, contained in sections 12, 13, 14, 15 and 16, pages 741 and 742; (7th ed., 2198).

No. 193.

Agreement between an executor and a creditor to refer a disputed claim.

(N. Y. R. S., part 2, chap. 6, title 3, art. 2, § 36, as amended by chap. 261 of Laws of N. Y., of 1859.)

Whereas, A. B., of the town of —, in the county of —, and State of —, has this day presented a claim against the estate of C. D., late of the town of —, in the county of —, and State of —, a copy of which claim, as presented by the said A. B., is hereunto annexed. And whereas, E. F., executor (or, administrator) of the said C. D., having declined to allow or pay the same, a controversy has thereupon arisen, between the said A. B. of the one part, and the said E. F., executor (or, administrator) of the said C. D., of the other part, whether or not such claim, or any part thereof, is just and valid against the estate of the said deceased; and whether or not the same or any, and if any, what part thereof should be allowed or paid by the said E. F., as such executor (or, administrator) of the said C. D., deceased; and both the said claimant and the said executor (or, administrator) being desirous of doing what is just and reasonable in the premises, and to avoid all unnecessary costs and trouble in relation thereto, have agreed, and do hereby agree, to refer the matter in controversy to E. F. (G. H. and I. J.), in case the surrogate of the county of — shall approve thereof, to hear and determine upon the same with all convenient speed.¹

Dated —, 1—.

A. B.,

C. D., Executor.

(or, Administrator.)

The undersigned, surrogate of the county of —, hereby, pursuant to statute, approves of the person (or, persons) named as referee (or, as referees) in the foregoing agreement.

Dated —, 1—.

T. H.,

Surrogate.

1. The statute of New York provides that if the executor or administrator doubts the justice of any claim so presented, he may enter into an

agreement, in writing, with the claimant, to refer the matter in controversy to three disinterested persons, or to a disinterested person, to be approved by the surrogate, and upon filing such agreement and approval of the surrogate in the office of the clerk of the Supreme Court in the county in which the parties, or either of them, reside, a rule shall be entered by such clerk, either in vaca-

tion or term, referring the matter in controversy to the person or persons so selected. (N. Y. R. S., part 2, chap. 6, tit. 3, art. 2, § 36, as amended by chap. 261, p. 569 of Laws of 1859.)

For further proceedings under the above section and subsequent sections, see Lansing's Forms of Civil Procedure, vol. 3, pp. 651-661, and notes thereto.

No. 194.

Agreement giving priority to a mortgage about to be executed over one previously executed.

Know all men by these presents, that whereas A. G. of, etc., and E. G., his wife, did, on the — day of —, 1—, execute and deliver to (The N. C. B. of A.) a mortgage upon a certain farm of land, of which D. G. died seized and possessed, situate partly in the town of — and partly in the town of —, in the county of — and State of New York, conditioned for and to secure the payment of the sum of — dollars, which said mortgage was recorded in the county clerk's office of — county on the — day of —, 1—, in Book of Mortgages No. —, at page —; and whereas, the said A. G. and his wife, for the purpose, among other things, of paying or securing certain debts owed by D. G. at the time of his death, have agreed to execute and deliver a mortgage upon said premises to F. V. of, etc., conditioned for the payment of the sum of — dollars, to be a first mortgage upon said premises:

Now, therefore, the said N. C. B. of A. of, etc., in consideration of the premises and of the sum of one dollar to it in hand paid by said A. G., the receipt whereof is hereby acknowledged, and of other good and valuable and sufficient considerations and causes moving thereto, hath bargained, consented, promised and agreed, and doth hereby bargain, consent, promise and agree to and with the said A. G., his heirs and assigns, that the mortgage upon said premises thus to be executed by said A. G. and wife to the said F. V. for

the amount and interest above mentioned shall at all times be a prior mortgage and a prior lien upon said premises to the said mortgage of the N. C. B. of A., first above mentioned.

And the said The N. C. B. of A. in consideration as aforesaid and for the purposes aforesaid, hath granted, released, quitclaimed and set over, and by these presents doth grant, release, quitclaim and set over to the said A. G., and to his heirs and assigns all and every part of the premises described in said mortgage, with the hereditaments and appurtenances thereunto belonging, and all the right, title and interest of the said The N. C. B. of A., in or to the same, to the intent that all of the said land and premises may be discharged from its said mortgage, solely and only so far as may be necessary to secure to said mortgage so to be executed and delivered as aforesaid, priority thereto, as above mentioned, holding and reserving its said mortgage unsatisfied and in full force and effect as a second and subsequent mortgage and lien on said premises after the mortgage to be executed thereon, as herein above mentioned, in all respects the same as if these presents had not been executed.

In witness whereof, the said N. C. B. of A. hath hereunto caused its corporate seal to be affixed, and these presents to be subscribed by its president, this — day of —, in the year 1—.

[SEAL.]

The N. C. B. of A.

by R. S., its President.

(Acknowledgment or proof by president, as in forms Nos. 89, 94, etc.)

No. 195.

Release of land from the lien of a judgment.

SUPREME COURT, — COUNTY.

| | | |
|----------|---|--------------------|
| A. F. B. | } | Recovery, \$ —, —. |
| agst. | | Costs \$ —, —. |
| C. R. F. | | <hr/> \$ — —. |

Judgment-roll filed and judgment docketed in — county clerk's office, on the — day of —, 1—, at — M.

I, A. F. B., the judgment creditor in the above-mentioned judgment, do hereby, in consideration of the sum of —

dollars, to me in hand paid by C. D., of, etc., remise, release and discharge the land and premises described as follows, to-wit: All, etc. (describing property), from all claim to or interest in the same, or any part thereof, which I may have by virtue of said judgment, and from all lien or incumbrance which has attached to the same, by reason of the said judgment.

In witness whereof, etc., as in form No. 30.

A. F. B. [L. s.]

(Certificate of acknowledgment or proof by A. F. B., as in chap. 3, forms Nos. 6, etc.)

No. 196.

Release of dower.

To all to whom these presents may come: I, A. B., relict, (or, widow) of B. B., late of —, send greeting: Know ye, that I, the said A. B., for and in consideration of the sum of — dollars, to me in hand paid, at or before the ensealing and delivery of these presents, by my son, C. B., of, etc., and for the love and affection which I have for my said son, have granted, remised, released and forever quitclaimed, and by these presents do grant, remise, release and forever quitclaim unto the said C. B., his heirs and assigns forever, all the dower and thirds, right and title of dower and thirds, and all other right, title, interest, property, claim and demand whatsoever, in law or equity, of me, the said A. B., of, in and to a certain parcel of land, situated, etc. (describe property), (or, if the release is intended to be a general one, say, of, in and to all and every the messuages, lands, tenements and real estate whereof the said B. B. died seized or possessed, or whereof he was seized or possessed at the time of his intermarriage with me, the said A. B., or at any time since, wheresoever the same may be, and be situate), so that I, the said A. B., my heirs, executors, administrators or assigns, nor any other person or persons, for her, them, or any of them, shall have claim, challenge, or demand, any dower or thirds, or any other right, title, claim or demand, of, in or to the same,

or any part or parcel thereof, in whosoever hands, seizin or possession, the same may or can be, but thereof and therefrom shall be utterly debarred and excluded forever, by these presents.¹

In witness whereof, etc. (as in form No. 30).

A. B. [L. S.]

Sealed and delivered in presence of

E. F.

(Certificate of acknowledgment or proof as in forms Nos. 6, etc.)

1. To the consummation of the title to dower, three things are requisite, viz.: Marriage, seizin of the husband, and his death. (4 Kent's Com. 36; Co. Litt. 31a.)

Under such circumstances the widow is entitled at common law to be endowed, for her natural life, of the third part of all the lands whereof her husband was seized, either in deed or in law, at any time during the coverture, and of which any issue that she might have had, might by possibility have been heir. This condition in respect to the wife's issue is, however, not contained in the statutes of some of the United States, *e. g.*, New York, New Jersey, Virginia, Arkansas or Missouri. (Id. 35, and note *b.*)

The inchoate right attaches upon the land as soon as there is a concurrence of marriage and seizin, and under the New York Revised Statutes, the husband alone cannot defeat it by any act in the nature of alienation or charge, without the assent of the wife given and proved according to law. (1 N. Y. Rev. Stat. 742, § 16; 7th ed., 2198.) No separate acknowledgment of the release of her dower need now be made by the wife. (Laws of N. Y., 1879, chap. 249, as amended by Laws of 1880, chap. 300; R. S., 7th ed., 2233.) By

that act her acknowledgment is to be in all cases the same as if she were sole.

Under the statutes of that State, in case of divorce, dissolving the marriage contract, for the misconduct of the wife, she shall not be endowed. (1 N. Y. R. S. 741, § 8; 7th ed., 2197.)

A wife cannot relinquish her dower in the real estate of her husband by executing a release thereof to him, or in any other way than by joining with him in a conveyance to a third person. (Carson v. Murray, 3 Paige, 483, 503; Marvin v. Smith, 46 N. Y. 571, 575.) The law regards the act of the wife, in joining in the deed, not as the alienation of an estate, but as a renunciation of her inchoate right of dower in favor of the grantee of her husband, so far as respects the title or interest created by his conveyance. (Hinchcliffe v. Shea, 103 N. Y. 153, 155.) See, also, Jones v. Fleming (104 N. Y. 418, rev'g S. C., 37 Hun, 227); Witthaus v. Schack (105 N. Y. 332, and the cases there cited).

The right to dower before assignment resting in action only, was formerly held to be inalienable so as to enable the grantee to bring an action for it in his own name. (Jackson v. Vanderheyden, 17 Johns. 167; S. C., 8 Am. Dec. 378.) The widow, it was

held, might release it, but could not convey or assign it. But see *Mutual Life Ins. Co. v. Shipman* (119 N. Y. 332); *Payne v. Becker* (87 id. 153); *Pope v. Mead* (99 id. 201), and *Howell v. Newman* (59 Hun, 538, 539), that this rule no longer exists. Until the assignment of her dower she has no estate in the land out of which such dower arises. (*Green v. Putnam*, 1 Barb. 500; *Scott v. Howard*, 3 id. 319.) But she has nevertheless an interest therein which may be pledged, transferred or conveyed by any appropriate instrument evidencing an intent to so transfer it. (*Mutual Life Ins. Co. v. Shipman*, *supra*, 332.)

No. 197.

A release of dower, in consideration of an annuity given by a will.

Whereas, my late husband, M. N., in and by his last will and testament, duly signed, sealed and published, bearing date —, 1—, did settle and secure unto and upon me, R. N., an annuity of — dollars, to be paid to me half yearly, by equal payments, in lieu and full satisfaction of the dower or thirds at common law or by statute, which I might otherwise have, claim, or be entitled to, out of all and every the lands, tenements and hereditaments whatsoever, of my said husband, deceased, or of, in, and to or out of the reversion, or remainder, rents, issues and profits thereof:

Now, therefore, I, the said R. N., for and in consideration of the said annuity so secured to me as aforesaid, and in pursuance and part performance of the said last will and testament of my said late husband, do hereby declare myself fully satisfied and contented therewith, and do hereby remise, release and forever quitclaim unto T. H. of, etc., and F. C., of, etc., trustees appointed by said last will and testament of my said late husband (in their actual possession and seizin now being), their executors, etc., all and all manner of dower, etc. (as in form No. 196).

In witness, etc. (as in form No. 30).¹

R. N. [L. S.]

Sealed and delivered in presence of

G. H.

Certificate of acknowledgment or proof, as in chap. 3, forms Nos. 6, etc.)

1. See note 1 to form No. 151, and *Lee v. Tower* (124 N. Y. 370; S. C., note 1 to form No. 196. See, also, 36 N. Y. State Rep. 344).

No. 198.

A mutual general release.

This indenture made this — day of —, between M. B. of, etc., of the one part, and G. H. of, etc., of the other part, witnesseth :

That said M. B. and G. H. have this day in consideration of the sum of — dollars by each to the other in hand paid, canceled and delivered up to the other certain covenants, bonds, notes of hand and written contracts, upon which each of the parties claimed and pretended to have claims and demands upon the other; the said claims and contracts so canceled and delivered up being supposed and intended to be all the claims and evidence of claim by each of the parties hereto upon the other, and in consideration thereof, each of them, the said M. B. and G. H., does hereby, for himself and his legal representatives, release and absolutely and forever discharge the other of and from all claims and demands, actions, causes of action of every name and nature, so that neither of them shall have any claim on the other, directly or indirectly, on any contract or supposed liability or thing undertaken, done or omitted to be done, from the beginning of the world to this day.

In testimony whereof, etc. (as in form No. 163).¹

| | |
|----------------|---------------|
| | M. B. [L. s.] |
| In presence of | G. H. [L. s.] |
| C. D. | |

1. See note to form No. 151.

No. 199.

A release of a proviso or condition.

Know all men by these presents, that I, M. B. of —, for divers good and valuable considerations, me hereunto moving, have remised, released and quitclaimed, and by these presents, for me, my executors, administrators and assigns, as well do remise, etc., unto L. M. of —, his heirs, executors, administrators and assigns as well one proviso or

condition, and all and every the sum and sums of money specified in the same proviso or condition contained or comprised in one pair of indentures of, etc., bearing date —, 1—, made between me, the said M. B., of the one part, and the said L. M. of the other part, and also all and all manner of actions and suits, cause and causes of actions and suits, for or concerning the said proviso or condition.

In witness, etc. (as in form No. 30).¹

M. B. [L. S.]

Sealed and delivered in presence of

J. F.

(Certificate of acknowledgment, etc., as in chap. 3, forms Nos. 6, etc.)

1. See note 1 to form No. 151

No. 200.

An agreement between mortgagee and mortgagor for mortgagor to grant building and other leases.

Agreement, etc., between A. B. of the one part and C. D. of the other part. Whereas, by indenture of mortgage bearing date the — day of, etc., and made or expressed to be made between the said C. D. of the one part and the said A. B. of the other part, all and singular his the said C. D.'s messuages, etc., situate, etc., were granted, bargained, sold, released and assured unto and to the use of the said A. B., his heirs and assigns, by way of mortgage for securing the payment of the sum of — dollars advanced and lent by the said A. B. to the said C. D. with interest for the same as in the said indenture of mortgage is mentioned. And whereas, several parts of the said premises are capable of great improvement by being let on building or repairing leases, and it may be expedient to let other parts thereof: Now these presents witness, and the said A. B., for himself, his heirs, executors and administrators, doth hereby covenant, declare and agree to and with the said C. D., his heirs and assigns, that if at any time whilst the principal sum of — dollars, or any part thereof, shall remain due and owing upon the said recited securities before the said A. B., his

executors, administrators or assigns shall have filed a bill to foreclose the equity of redemption of the said mortgage and premises, the said C. D. shall be desirous of granting any such leases, then it shall and may be lawful to and for him, the said C. D., by indenture or indentures under his hand and seal, to demise, lease, and grant all or any part or parts of the said hereditaments and premises, comprised in the said hereinbefore in part recited indenture of mortgage unto any person or persons who shall be willing to build upon or to improve the same on repairing leases for any term or number of years not exceeding ninety-nine years; and also to demise, lease and grant all or any part of the said lands, hereditaments and premises as have usually been letten at rent or rents unto any person or persons who shall be willing to take the same for any term or number of years not exceeding (twenty-one) years, so as the respective lease or leases be made to take effect in possession and not in reversion, or by way of future interest, and so as such respective grants or leases for (ninety-nine) years be made in order for the premises to be built upon or improved. And also, that in all and every the said leases there be reserved and made payable, half-yearly or oftener during the continuance of the said term thereby to be granted, the best and most approved yearly rent and rents that can be had or reasonably gotten for the same without taking any sum or sums of money or other things by way of fine, income or foregift, and so as the several lessees in the said several building or repairing leases do enter into proper and usual covenants to build and keep in repair the messuages, erections and buildings agreed to be erected and built upon the ground thereby to be leased respectively, with covenants in all the leases that the tenants and lessees do leave and surrender the premises at the end of the term or terms in such leases respectively to be granted, and so as in every of the said leases there be contained conditions of re-entry, etc., and that he, the said A. B., his heirs, executors, administrators and assigns, shall and will, from time to time, upon the reasonable request, and at the costs and charges of the said C. D., his heirs and assigns, allow, ratify and confirm all and every the lease and leases to be

granted in conformity to the restrictions hereinafter mentioned. Provided, such confirmation does not prejudice his right to enter into and recover and hold the possession of the said mortgaged premises by virtue of the said recited mortgage deeds, subject only to such leases as have been granted by the said C. D., agreeable to the true intent and meaning of these presents.

In witness, etc. (as in form No. 163).¹

A. B. [L. S.]

C. D. [L. S.]

(Certificate of acknowledgment or proof as in chap. 3, forms Nos. 6, etc.)

1. See note 1 to form No. 151.

No. 201.

Agreement giving right to manufacture and sell a patented article within certain territory.

In consideration of the sum of — dollars, to him in hand paid by C. D., of, etc., and of other considerations, covenants and agreements hereinafter mentioned, the undersigned A. B., of, etc., does hereby license and authorize the said C. D., his executors, administrators and assigns, to make and vend, at wholesale or retail, the patented articles mentioned in certain letters-patent issued therefor to said A. B. by the United States of America, dated the — day of —, 1—, during the continuance of the said patent (or, of any renewal thereof or new patent therefor), within (stating territory), and to receive all the profits and advantages of such manufacture and sales within the said territory, without any interference, suit, trouble or hindrance, of, from or by him, the said A. B., or any other person or persons claiming to hold and use said invention from, by, under or in trust for him or them, by virtue of said letters-patent or otherwise.

And said A. B., for himself, his executors, etc., hereby covenants and agrees with the said C. D., his executors, etc., that he will not at any time during the residue of said term, or of any such future term, grant any license to any other person to make or vend the said articles within said limits,

without first obtaining the consent and license, in writing, of the said C. D., his executors, etc.

And it is further agreed that in case of any infringement of said letters-patent within the said territory, the said C. D., his executors, etc., may, at his or their option, in the name of said A. B., his executors, etc., commence and prosecute all such actions as may be deemed expedient, against any person or persons making such infringement; and said A. B. hereby constitutes said C. D., his executors, etc., the lawful attorney and attorneys of said A. B., irrevocable, at the cost and expense and for the benefit of said C. D., his executors, etc., to commence and prosecute, in the name of said A. B., all such suits and actions as aforesaid.

In witness, etc. (as in form No. 181).

A. B.

C. D.

(Certificate of acknowledgment, etc., as in chap. 3, forms Nos. 6, etc.)

CHAPTER VI.

Forms of Apprenticeship.

- No. 202. Indenture of apprenticeship by a minor, with consent of his parents, or parent or guardian.
203. Indenture of apprenticeship by a minor, with consent of an overseer or county superintendent of the poor, or his guardian.
204. Certificates to be indorsed upon indenture.
205. Indenture of clerkship.
206. Indenture of a female servant, who binds herself with the consent of her parents, or parent or guardian.
207. Agreement of a father or guardian to be annexed to the indenture of apprenticeship to be bound in damages for the default of the apprentice.
208. Contract to bind to service until twenty-one, or for a shorter period, a minor coming from a foreign country beyond sea.
209. Contract of service for one year to pay an emigrant's passage.
210. Assignment of an emigrant's contract of service indorsed thereon.
211. Assignment of an indenture of apprenticeship.
212. Certificate of employer at the expiration of apprenticeship.
213. Assignment of indenture or contract of service on death of master.
214. Consent of apprentice, etc., to assignment of indenture.
215. Affidavit upon application for order of Court of Sessions directing assignment of indentures of apprenticeship.
216. Notice of application for order of Court of Sessions directing assignment of indentures, etc., to be made.
217. Order of Court of Sessions directing such assignment to be made.
218. Complaint in action against employer for neglect to teach, etc., apprentice.
219. Complaint against the master for cruelty, misuse or violation of duty, where money has been paid or agreed to be paid at the time of binding.
220. Undertaking of master where complaint is not compromised.
221. Order of Court of Sessions on hearing of complaint, form No. 219.
222. Same complaint, when no money has been paid or agreed to be paid for his instruction.
223. Summons issued upon complaint, form No. 222.
224. Dismissal of complaint or discharge of apprentice.
225. Complaint against apprentice or servant for absenting himself or refusing to serve, or for a misdemeanor or ill-behavior, where money has been paid or agreed to be paid by or to the master.
226. Warrant upon filing of complaint, form No. 225.

No. 227. Undertaking to be given by clerk or apprentice for his appearance at Court of Sessions, where money has been paid or agreed for on binding him out.

228. Order of court on hearing of complaint, form No. 225.

229. Same complaint against apprentice, where no money has been paid or agreed to be paid for his instruction.

230. Warrant when complaint is made in the absence of the defendant.

231. Commitment or discharge of defendant by magistrate.

232. A release of an apprentice from his indenture.

No. 202.

Indenture of apprenticeship by a minor, with consent of his parents, or parent or guardian.

This indenture, made the — day of —, in the year 1—, between A. B., of the age of — years, on the — day of — last,¹ the son of J. B. (and M. B.), of the (town) of —, in the county of —, and State of (New York), and said J. B. and M. B. (or, E. F., the guardian of said A. B.), of the one part, and C. D. of the same place of the other part, witnesseth:² (+) That the said A. B., by and with the consent of the said J. B., his (father) (and of his mother, the said M. B.)³ (or, of E. F., his said guardian), [signified in writing at the end of (or, indorsed upon) this indenture],⁴ and by the free will and consent of the said A. B., hath placed and bound himself apprentice to C. D., of the (town) of —, (blacksmith,) which (trade) the said C. D. now follows; and with the said C. D. to dwell, continue and serve, from the day of the date hereof, until the said A. B. shall have attained the age of twenty-one years, which will be on the — day of —, in the year 1— (or, if drawn under the laws of New York, and more than five or less than three years will elapse before the minor will arrive at age, say as follows: For the term of three (or, five) years from the date hereof),⁵ during all which time the said apprentice shall well and faithfully serve his said master, keep his secrets, and obey his lawful commands. (*) He shall do no hurt to his master, nor suffer it to be done by others, but shall to his utmost power prevent the same, or forthwith give notice thereof to his master; he shall not embezzle or waste the goods of his said master, nor lend them without his master's consent; he

shall not play at cards or dice, or any other unlawful game; he shall not frequent taverns, ale houses or tippling houses; he shall not commit fornication, nor contract matrimony (he shall not leave his said employer during the said term for which he is hereby indentured),⁶ and shall not depart or absent himself from the service of his said master, without his said master's leave or consent, but in all things he shall demean and behave himself toward his said master during the said term as a good and faithful apprentice (and if he shall leave the said C. D., his employer, except by his consent or for sufficient cause and shall refuse to return, the said C. D. may compel his return under the penalties of an act of the legislature of the State of New York, entitled "An act in reference to apprentices and employers," passed May 27, 1871.⁷

[And the said C. D. acknowledges that he has received with the said A. B., from the said J. B., his (father), the sum of — dollars as a compensation for his instruction as hereinafter mentioned (or, state any agreement as to payment of wages or salary to apprentice.)]⁸

And the said C. D. covenants and agrees to and with the said A. B., that he will teach and instruct the said A. B., or cause him to be carefully and skillfully taught and instructed, after the best way and manner he can, in every branch of said (trade) of a (blacksmith) to which said A. B. is hereby indentured,⁹ with all things belonging thereto, and that he shall and will find (and provide at all times during¹⁰ the continuance of said apprenticeship) and allow to the said apprentice suitable and proper board, lodging and medical attendance,¹¹ [meat, drink, washing, lodging, suitable apparel for working and holydays and all other things necessary, fit and convenient for said apprentice], during the term aforesaid, (and that at the end of said term he will give to said A. B. a certificate in writing, stating that the said A. B. has served a full term of apprenticeship of three, (or four, or five) years at said (trade)],¹² and that he will cause the said apprentice within such term to be instructed to read and write, and in the common and general rules of arithmetic (as far as the rule of three direct, inclusive,) and at the end of said term will give to the said apprentice a new

Bible.¹³ (And for the true performance of all and singular the covenants and agreements aforesaid, the said parties bind themselves each to the other firmly by these presents.)

In witness whereof, the said parties have hereunto respectively set their hands and seals, the day and year first above written.¹⁴

A. B. [L. S.]

C. D. [L. S.]

(Acknowledgment or proof as in forms Nos. 6, etc.)

1. See note 2 to this form, as to this statement of age being required by statute in New York and as to construction of statute.

2. The provisions of the New York Revised Statutes on the subject of apprenticeship are in part as follows :

Every male infant, and every unmarried female under the age of eighteen years, with the consent of the persons or officers hereinafter mentioned, may of his or her own free will, bind himself or herself, in writing, to serve as clerk, apprentice or servant in any profession, trade or employment ; if a male, until the age of twenty-one years, and if a female, until the age of eighteen years, or for any shorter time ; and such binding shall be as valid and effectual, as if such infant was of full age, at the time of making such engagement. (2 N. Y. Rev. Stat. 154, § 1; 7th ed. 2348.)

Such consent shall be given :

First. By the father of the infant. If he be dead, or be not in a legal capacity to give his consent, or if he shall have abandoned and neglected to provide for his family, and such fact be certified by a justice of the peace of the town, and indorsed on the indenture, then

Second. By the mother. If the mother be dead, or be not in a legal capacity to give such consent, or refuse, then

Third. By the guardian of such infant duly appointed. If such infant have no parent living, or none in a legal capacity to give consent, and there be no guardian, then

Fourth. By the overseers of the poor, or any two justices of the peace of the town, or any judge of the county courts of the county, where such infant shall reside. (Id., § 2.)

Such consent shall be signified in writing, by the person entitled to give the same, by a certificate at the end of, or indorsed upon, the indentures, and not otherwise. (Id., § 3.)

The above provisions have been held to be not merely directory, but peremptory and absolute, and that they must be substantially complied with, otherwise the indenture will not be binding upon the infant. (People, *ex rel.* Barbour, v. Gates, 57 Barb. 291, 299, reversed on other points by the Court of Appeals, 43 N. Y. 40.) See, also, § 26, page 158, N. Y. R. S.; 7th ed. 2352.

By chapter 934 of the Laws of New York of 1871, p. 2147, the following provisions were made:

SECTION 1. On and after the passage of this act, it shall not be lawful for any person or persons in this State to employ or take as an apprentice any minor person to learn the art or mystery of any trade or craft without first having obtained the consent of such person's legal guardian or guar-

dians; nor shall any minor person be taken as an apprentice aforesaid unless an agreement or indenture be drawn up in writing, in accordance with the provisions of this act, and duly executed under seal by the person or persons employing said apprentice, and also by the parents or parent, if any be living, or by the guardian or guardians of said apprentice, and likewise by said minor person so becoming an apprentice.

§ 2. Said agreement or indenture, in order to make the law valid, shall contain the following covenants and provisions: 1. That said minor person shall be bound to serve his employer or employers for a term of not less than three or more than five years. 2. That said minor person so indentured shall not leave his said employer or employers during the term for which he shall be indentured, and if any said apprentice so indentured as aforesaid shall leave his said employer or employers, except as hereinafter provided, the said employer or employers may compel the return of the said apprentice under the penalties of this act. 3. That said employer or employers shall covenant and agree in said indenture to provide at all times during the continuance of the same, suitable and proper board, lodging and medical attendance for said apprentice, and said employer or employers shall also further covenant and agree to teach or cause to be carefully and skillfully taught to his or their said apprentice every branch of his or their business to which said apprentice may be indentured, and said employer or employers shall be further bound, at the expiration of said apprenticeship, to give to said apprentice a certificate in writing, stating that said apprentice has served a full term of apprenticeship of not less

than three or more than five years, at such trade or craft as may be specified in said indenture.

§ 3. (As amended by chap. 437 of Laws of 1888, p. 713.) Any person or persons taking an apprentice without complying with the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof before any magistrate or court having jurisdiction, held in the county in which the business of said employer or employers may be conducted, shall be subject to a fine of not less than five hundred dollars, the fine to be paid to the treasurer of the said county for the use and benefit of said county. It shall be the duty of the factory inspector and the deputy factory inspectors to see to it that the duties and obligations of employers to their apprentices are observed and enforced, to enforce this act, and to prosecute such employers for a failure to perform such duties and obligations, or any violation of this act.

§ 6. Any indentures made and executed, wherein parts conflict with or are not in accordance with the provisions of this act, shall be invalid and without any binding effect.

§ 7. All acts or parts of acts inconsistent herewith are hereby repealed.

For further provisions of the act of 1871, above mentioned, see notes 1 to forms Nos. 203, 204.

The mode provided by the Revised Statutes for the apprenticeship of minors (2 N. Y. R. S. 154, above cited) being inconsistent with the provisions contained in chapter 934 of 1871 above referred to, the validity of articles of apprenticeship must now be determined by the latter act. (Barton v. Ford, 35 Hun. 32.)

Articles of apprenticeship which do not contain the provision and

covenant, specified in the second subdivision of section 2 of chapter 934 of 1871, to the effect that the apprentice shall not leave during the term, and may be compelled to return if he does, are, because of such omission, rendered invalid and of no effect by the express provision of section 6 of the said act. (Id.)

3. The words in parenthesis are inserted under the provisions of section 1 of chapter 934 of 1871, cited in note to this form, which require that both parents if living, or the guardian or guardians of the minor, shall execute the indenture. (Section 3, N. Y. R. S., cited in note 2 to this form.)

4. The words in brackets seem necessary to be inserted in New York, as it does not clearly appear that this consent is not still to be given in the manner required by the Revised Statutes of that State.

5. See provisions of subdivision 1 of section 2, chapter 934 of Laws of 1871, cited in note 2 to this form.

6. See provisions of subdivision 2 of section 2 of chapter 934 of Laws of 1871, cited in note 2 to this form.

7. See provisions of subdivision 2 of section 2 of chapter 934 of Laws of 1871, cited in note 2 to this form.

8. The New York Revised Statutes require that every sum of money paid or agreed for, with, or in relation to, the binding out of any clerk or apprentice, shall be inserted in the indentures. (2 N. Y. Rev. Stats., 155, § 9; 7th ed. 2340.)

9. See the provisions of subdivision 3 of section 2 of chapter 934 of Laws of 1871, cited in note 2 to this form.

10. See provisions of subdivision 3 of section 2 of chapter 934 of Laws of 1871, cited in note 2 to this form.

11. See provisions of subdivision

3 of section 2 of chapter 934 of Laws of 1871, cited in note 2 to this form.

12. See the provisions of subdivision 3 of section 2 of chapter 934 of the Laws of 1871, referred to in note 2 to this form.

13. The New York Revised Statutes require that whenever any child shall be bound out by the county superintendents of the poor of any county, or by the overseers of the poor of any city or town, the indentures shall contain an agreement on the part of the person to whom such child shall be bound, that he will cause such child to be instructed to read and write, and if a male, will cause him to be instructed in the general rules of arithmetic; and that every such indenture shall also contain an agreement, that the master will give to such apprentice, at the expiration of his or her service, a new Bible. (2 N. Y. R. S. 155, § 10; 7th ed. 2349.)

14. Indentures are not void because they do not specify the trade in which the apprentice is to be instructed. The statute does not require it to be specified. (Fowler v. Hallenbeck, 9 Barb. 309.)

Therefore an indenture providing that the master should teach the apprentice such manual occupation, or branch of business, as should be found best adapted to his capacity, was held valid. (Id.)

The age of every infant apprentice is required by the provisions of the New York Revised Statutes to be inserted in the indentures, and that the same shall be taken to be the true age, without further proof. Public officers are required, whenever they are authorized to execute any indentures, to inform themselves fully as to infant's age. (2 N. Y. R. S. 155, § 8; 7th ed. 2349.)

The statute makes the evidence of age by the statement in the indenture *prima facie* only. It may always be contradicted by the infant and it may be shown in defense by a person sued by the master for employing the apprentice, that the apprentice's minority has expired. (*Drew v. Peckwell*, 1 E. D. Smith, 408; *Banks v. Metcalfe*, 1 Wheel. Cr. Cas. 381; *Matter of Brennan*, 1 Sandf. 711.)

Females, as well as males, are intended by the provisions of the N. Y. Rev. Stat., relative to masters and apprentices. (2 N. Y. R. S. 161, § 43; 7th ed. 2353.)

As to assignability of indentures see *Nickerson v. Howard* (19 Johns. 113); *Guilderland v. Knox* (5 Cow. 363); *Williams v. Finch* (2 Barb. 208); N. Y. Code Crim. Proc., §§ 939, 940; 2 N. Y. R. S. 156, § 14, cited in note 1 to form No. 210.

Counterparts of the indentures

executed by poor officers are required to be filed in the clerk's offices of their county, city or town. (2 N. Y. R. S. 155, § 11; 7th ed. 2349.)

Other provisions are contained in the New York Revised Statutes on the subject, all of the provisions of which statutes are to be construed with reference to section 6 of the act of 1871, cited in note 2 to this form. (See 2 R. S. 154-161; 7th ed. 2348-2354.)

See also chap. 438, p. 511, of Laws of New York of 1884; *People, ex rel. Wehle, v. Weissenbach* (60 N. Y. 385); *People, ex rel. Heilbronner, v. Hoster* (14 Abb. N. S. 414); *Matter of Barre* (id. 426); *Johnson v. Dodd* (56 N. Y. 76); *Matter of Forsyth* (66 How. Pr. 180); *Potter v. Greene* (39 Hun, 72); *Patterson v. Kelly* (37 N. Y. State Rep. 468); S. C. (14 N. Y. Supp. 118); further as to indentures of apprentices, etc.

No. 203.

Indenture of apprenticeship by a minor with consent of an overseer or county superintendent of the poor, as his guardian.

(2 N. Y. R. S. 154, §§ 5, 6.)

This indenture made the — day of —, in the year 1—, between A. B. of age of — years, on the — day of — last, and E. D. (and G. J.,) the overseer (or, overseers) of the poor of the city (or town) of —, in the county of —, (or, superintendents of the poor of the county of —), in the State of New York, of the one part, and C. D. of the same place of the other part, witnesseth:

That whereas, the said A. B. has been sent to the county poor-house of the county of — (or, to the poor-house of the town or city of — in said county), (or, whereas, the said A. B., or the parents of the said A. B.) has (or, have) become chargeable to the said county of — (or, to the said town or city of —):

Now, therefore, the said A. B., by and with his own free will and consent, and with the consent of his said legal guardians, the said E. D., as overseer of the poor, etc., as aforesaid, signified in writing at the end of (or, indorsed upon) this indenture hath placed, etc. (continuing as in form No. 202),¹ omitting, however, covenant to perform on the part of the overseer, etc.

| | | |
|-------|-------------------|---------|
| E. D. | } overseers, etc. | [L. S.] |
| G. J. | | |
| A. B. | | [L. S.] |
| C. D. | | [L. S.] |

Sealed and delivered in presence of

G. H.

(Acknowledgment or proof as in forms Nos. 89, etc.)

1. See notes to last form, No. 202, as to statutes of New York regulating generally the apprenticing of minors.

The New York Revised Statutes provide as follows, in regard to apprenticing of minors by officers of the poor, viz.: The county superintendents of the poor in the several counties, may bind out any child, under the ages above specified, who shall be sent to any county poor-house, or who is or shall become chargeable, or whose parent or parents shall become chargeable, to such county, to be clerks, apprentices or servants, until such child, if a male, shall be twenty-one years old, or if a female, shall be eighteen years old; which binding shall be as effectual as if such child had bound himself with the consent of his father. (2 N. Y. R. S. 154, § 5; 7th ed. 2349.)

The overseers of the poor of any town or city, may, in like manner, bind out any such child, who, or whose parent or parents, shall become chargeable to such town or city, or who shall have been sent to any poor-house, other than a county

poor-house, with the consent in writing, of any two justices of the peace of the town, or of the mayor, recorder and aldermen of any city, or of any two of them. (Id., § 6.)

The county superintendents of the poor, and the overseers of the poor of the respective cities or towns shall be the guardians of every person bound or held in service, in their respective cities or towns, to take care that the terms of the contract of service be fulfilled, and that such person be properly used; and it is hereby made their especial duty to inquire into the treatment of every such person, and redress any grievance in the manner prescribed by law. (Id. 158, § 27; 7th ed. 2352.)

Under the provisions of section 1 of chapter 934 of the Laws of New York of 1871, cited in note 2 to form No. 202, every agreement or indenture of apprenticeship is required to be "duly executed under seal by the person or persons employing said apprentice, and also by the parents or parent, if any be living, or by the guardian or guardians of said apprentice, and likewise by said minor person so becoming an apprentice." •

Under the provisions of section 27 above cited it is probably not necessary for the overseers of the poor to be appointed the guardians of the apprentices, but it will be necessary for the county superintendents of the poor to receive such appointment to render the indenture valid under the provisions of said section 1 of chapter 934 of the Laws of 1871.

The term "sent to the county poor-house" has reference to the object for which such poor-house was erected, and a person can only be said to have been sent there, within the meaning of the statute (§ 5, above cited), when he is sent there according to law, and for the purposes contemplated by law. (*People, ex rel. Bentley, v. Hanna*, 3 How. Pr. 39.)

Where a person is relieved, on his own application, by an overseer of the poor, without a previous order for that purpose, this is sufficient to authorize the overseers of the poor to bind out the children of such person as poor apprentices. (*Schermerhorn v. Hull*, 13 Johns. 270.) But see *Peo-*

ple, ex rel. Heilbronner, v. Hoster (14 Abb. N. S. 414).

The authority to bind minors as apprentices, given by section 5, above cited, to county superintendents of the poor may, under the provisions of 1 R. S. 617, § 15, be executed by a majority of the board, without a meeting of or notice to all. (*Johnson v. Dodd*, 56 N. Y. 78.)

The board of commissioners of public charities and corrections of the city and county of New York, created by the act of 1860 (chap. 510, Laws of 1860), has power to bind out as an apprentice any minor child under its care, chargeable to the city. (*People, ex rel. Wehle, v. Weissenbach*, 60 N. Y. 385.) See, also, *Hamilton v. Eaton* (6 Cow. 658).

It is probably no longer necessary to annex the consent of the overseers of the poor to the indenture in addition to their joining in the indenture, as required by the New York Revised Statutes (2 R. S. 154, § 2, subd. 4), but if considered necessary to be annexed, the form of such consent will be found in form No. 204.

No. 204.

Certificates to be indorsed upon indenture.

2 N. Y. R. S. 154, §§ 2, 3.)

1. Of parents.

I, J. B. (or, M. B., or we, J. B. and M. B.), of the town of —, in the county of —, the father (and mother) [or, the mother] of A. B., named in the above (or, within) indenture, having consented that he should bind himself as therein stated, do hereby signify my (or, our) consent thereto, according to the statute in such case made and provided.

Dated the — day of — in the year 1—. ¹

J. B.
M. B.

2. *Of justice of the peace.*

I, J. G., a justice of the peace of the town of —, in the county of — aforesaid, do certify that J. B., the father of the infant named in the within indenture, is dead (or, is not in legal capacity to give his consent thereto; or, has abandoned and neglected to provide for his family).

Dated this — day of —, in the year 1—.

J. G.,

Justice of the Peace.

3. *Of guardian.*

I, P. W., the guardian duly appointed of A. B., in the within indenture named, do certify that the father and mother of the said A. B. are dead (or, that the father of said A. B. is dead, and that the mother of the said A. B. refuses her consent to the said indenture of apprenticeship; or, is not in a legal capacity to give her consent to the said indenture of apprenticeship), and that I have consented as his guardian, and hereby consent that he, the said A. B., should bind himself in and by the said indenture.

Dated the — day of —, 1—.

P. W.

4. *Of overseers of the poor, etc.*

The undersigned, overseers of the poor of the town of — (or, two justices of the peace of the town of —; or, judge of the County Court of the county of —), where the within named A. B. resides, do certify that the said A. B. has no parent living; (or, no parent in legal capacity to give consent to the within indenture; or, no father living, and his mother is not in legal capacity to give consent to the within indenture), and that he hath no guardian, other than the undersigned, and that we, the said overseers (or, justices, or, judge,) do hereby signify our consent that the said A. B. should bind himself, as in and by this indenture he hath done.

Dated the — day of —, 1—.

G. H.

J. K.

1. This certificate of consent and indentures (sections 2 and 3, cited in note the three following ones are prepared 1 to last form, No. 203). It may be under the New York Revised Statutes considered doubtful whether any

certificates of consent are now required in that State, where the parent or parents or the guardian or guardians join in the indenture, and their consent is therein stated, and the circumstances are recited under which the consent is given, so as to show conformity with the statute of 1871, chap. 934, cited in note 1 to last form, No. 203, but these certificates are given here, as it may be thought to be more prudent to annex them to or indorse them upon the indenture. See, also, *People v. First Judge of Livingston* (2 Hill, 596), cited in note 1 to form No. 207.

Numbers 2 and 4 can hardly be used under the said statute of 1871,

as that act requires "the consent of the legal guardian or guardians" of the apprentice, and requires the indenture to be "duly executed under seal by the person or persons employing said apprentice, and also by the parents or parent, if any be living, or by the guardian or guardians of said apprentice, and likewise by said minor person so becoming an apprentice." They will, however, be of use in States whose statutes upon the subject are similar to the New York Revised Statutes.

See further as to effect of joining in the indenture as to consent, *Scott v. Mills* (40 A. L. J. 372; 115 N. Y. 376).

No. 205.

Indenture of clerkship.

As in form No. 202, substantially to (*) and from thence as follows:

And the said C. D. covenants and agrees to and with the said A. B., that he will find and furnish to the said A. B., employment during the said period, in and about the business of a merchant, in the buying and selling of goods and merchandise, and the keeping of books of account, and in such other things as appertain and belong to the business of a merchant, as it has heretofore been conducted and carried on by the said C. D.; and that he, the said C. D., will well and faithfully teach and instruct, or cause to be carefully and skillfully taught the said A. B., in the art, business and employment aforesaid, and every branch thereof to which he is hereby apprenticed; and that he will find and provide for the said A. B., at all times during the continuance of said apprenticeship, suitable and proper board, lodging and medical attendance (clothing and other necessities), and will, at the expiration of said apprenticeship, give to said apprentice, A. B., a certificate in writing, stating that said A. B. has served a full term of apprenticeship of three (or, four; or, five) years, at such trade, craft and business specified in this indenture.

And that he will cause said A. B., within such term, to be instructed to read and write, and in the common and general rules of arithmetic (as far as the rule of three direct inclusive), and at the end of said term will give to the said A. B. a new Bible.

And the said C. D. acknowledges that, etc. (as in form No. 2 of receipt of money by him), (or, insert any agreement for payment of wages or salary to apprentice)

In witness, etc. (as in form No. 206).¹

(Signatures and seals as in form No. 206.)

Sealed and delivered in presence of

G. H.

(Acknowledgments or proof as in forms Nos. 6, etc.)

1. See notes to form No. 202.

No. 206.

Indenture of a female servant, who binds herself with the consent of her parents or parent or guardian.

This indenture, made the — day of —, in the year 1—, between Mary S., an unmarried female, of the age of (twelve) years,¹ on the — day of —, 1—, last, of the town of —, in the county of —, the daughter of John S. (and Jane S.) of the same place, and said John S. (and Jane S.), (or, I. J., the guardian of said Mary S.), of the one part, and C. D. of the town and county aforesaid, of the other part, witnesseth: That the said Mary hath of her own free will, and by and with the consent of the said John S., her father (and Jane S., her mother), (or, of I. J., her said guardian), placed and bound herself as a servant to the said C. D., with the said C. D. to continue and serve, from the day of the date hereof, until the said Mary S. shall have attained the age of eighteen years (or, for the term of three or four or five years),² which will be (or, expire) on the — day of —, in the year 1—, during all which term the said Mary shall well and faithfully serve and obey the said C. D. as a good and faithful servant, in all such lawful business as the said Mary shall be put unto, by the command of the said C. D., and honestly and obediently in all things shall behave

herself toward the said C. D., and honestly and orderly toward the rest of his family. That said Mary S. shall not leave the said C. D. during the said term for which she is hereby indentured, and if said Mary S. shall leave the said C. D., except as is provided by an act of the legislature of the State of New York, entitled "An act in reference to apprentices and employers," passed May 27, 1871, the said C. D. may compel her return under the penalties of said act.³

And the said C. D. covenants and agrees to and with the said Mary S., that he will provide at all times, during the continuance of the said apprenticeship, suitable and proper board, lodging, washing, and medical attendance (and all other necessities), for said Mary S., and further that he will teach, or cause to be carefully and skillfully taught to said Mary S., every branch of his business to which she is hereby indentured, and further that he will, at the expiration of said apprenticeship, give to said Mary S. a certificate in writing, stating that the said Mary S. has served a full term of apprenticeship of three (or, four; or, five) years, at the trade or craft of a servant;⁴ and that he will cause her to be taught to read and write, and at the end of said term will give to her a new Bible.

[And the said C. D. acknowledges that he has received with the said Mary S., from her father, said John S., the sum of — dollars, as a compensation for his instruction as hereinbefore mentioned],⁶ (or, state any agreement as to payment of wages or salary to servant.)

In witness whereof, the said parties have hereunto respectively set their hands and seals, the day and year first above written.⁷

M. S. [L. S.]

J. S. [L. S.]

J. S. [L. S.]

[or, I. J. (L. S.)]

Sealed and delivered in presence of

E. F.

(Acknowledgment or proof as in forms, Nos. 6, etc.)

1. Under the provisions of the New York Revised Statutes the age of the apprentice is required to be stated in the indenture. (See note 2 to form No. 202.)

2. By chapter 934 of Laws of New York of 1871, § , the term of apprenticeship must be at least three and not more than five years. (See note 2 to form No. 202.)

3. This covenant on the part of the employer is required to be inserted by section 2, subdivision 2, of chapter 934 of the Laws of New York of 1871. (See that section cited in note 2 to form No. 202.)

See also *Barton v. Ford* (35 Hun, 32), cited in same note.

4. This covenant is required by section 2, subdivision 3 of chapter 934 of the Laws of New York of 1871. (See that section cited in note 2 to form No. 202.)

5. This covenant is required by the

New York Revised Statutes in case of the apprentice's being bound out by officers of the poor. (See § 10, vol. 2, p. 155; 7th ed. 2349.)

6. By the New York Revised Statutes every sum of money paid or agreed for, with or in relation to the binding out of any clerk or apprentice, is required to be inserted in the indentures. (2 N. Y. R. S. 155, § 9; 7th ed. 2349.)

7. See generally on this subject the notes to form No. 202.

No. 207.

Agreement of a father, or guardian, to be annexed to the indenture of apprenticeship to be bound in damages for the default of the apprentice.

In consideration of the covenants and agreements in the within indenture to be performed by the said C. D. to and with my son (or, ward), A. B., within named, I do hereby bind myself to the said C. D. for the true and faithful performance and observance by the said A. B. of the matters and things to be performed and observed in and by the said indenture; and I do hereby covenant to and with the said C. D. that the said A. B. shall in all things well and truly perform and observe the same.

Witness my hand and seal, the day and the date of said indenture.¹

J. B. [L. S.]

Sealed and delivered in presence of

E. F.

(Acknowledgment or proof as in forms Nos. 6, etc.)

1. Where the father's consent was expressed in the instrument, and he signed it, and also signed an agreement at the end of the indenture, binding himself for the faithful performance of the indenture by the apprentice, it was held a sufficient consent, signified in writing by a certifi-

cate at the end of the indentures, under 2 N. Y. R. S. 154, § 3. (*People v. First Judge of Livingston*, 2 Hill, 596.)

An indenture, after stating the consent of the guardian and the terms and duration of the apprenticeship, concluded thus: For the true per-

formance of all and singular the said covenants and agreements, the said master, apprentice and guardian have hereunto interchangeably set their hands and seals, etc. The instrument was signed and sealed by all three. *Held*, that the guardian was personally bound for the performance of the covenant and for the good conduct of the apprentice.

Though it is not necessary the parent or guardian should bind himself for the good conduct of the apprentice, yet if the language of the indenture evinces an intention to do so, he will be held. (*Bull v. Follett*, 5 Cow. 170.) See, also, *Mead v. Billings* (10 Johns. 99); *Ackley v. Hoskins* (14 id. 374).

No. 208.

Contract to bind to service until twenty-one, or for a shorter period, a minor coming from a foreign country beyond sea.

(2 N. Y. Rev. Stats. 155, 156, §§ 12, 13.)

This contract, made the — day of —, in the year 1 —, between J. N., an infant under the age of twenty-one years, to-wit, of the age of (nineteen) years on the (first) day of (March) last, and of F. N., the father, and M. N., the mother, of said infant (or, of C. J., the guardian of said infant) of the one part,¹ and J. S., of the city of New York, merchant, of the other part, witnesseth: (*) That the said J. N., in pursuance of the statute in such case made and provided, and in consideration of the covenants hereinafter mentioned, with the consent of his said parent (or, parents; or, guardian), hath bound himself, and hereby doth bind himself to service to the said J. S. and his assigns, with him and them to continue and serve from the day of the date hereof, unto the full end and term of (two) years (or, until the said J. N. shall be twenty-one years of age, which will be on the — day of —, in the year 1 —),² during all which term the said J. N. shall well and faithfully serve the said J. S. and his assigns, in all such lawful business as he shall be put to by the said J. S. or his assigns, to the utmost of the power and ability of the said J. N., and that he will behave himself honestly and obediently to the said J. S. and his assigns, at all times.

That said J. N. shall not leave the said J. S. during the said term for which he is hereby indentured, and if said J.

N. shall leave the said J. S. except as is provided by an act of the legislature of the State of New York, entitled "An act in reference to apprentices and employers," passed May 27, 1871, the said J. S. may compel his return under the penalties of said act.

And the said J. N. covenants and agrees to and with the said J. S., that he will provide at all times during the continuance of the said apprenticeship, suitable and proper board, lodging, washing and medical attendance, and all other necessities for said J. N., and further that he will teach or cause to be carefully and skillfully taught to said J. N. every branch of his business to which he is hereby indentured, and further, that he will, at the expiration of said apprenticeship, give to the said J. N. a certificate in writing, stating that the said J. N. has served a full term of apprenticeship of (two) years, at the trade or craft of a (stating business),³ and that he will cause him to be taught to read and write, and at the end of said term will give to him a new Bible.

[And the said J. S. acknowledges that he has received with the said J. N., from his (father), said F. N., the sum of — dollars, as a compensation for his instruction, as hereinbefore mentioned], (or, state any agreement for payment of wages or salary to apprentice).

In witness whereof, the said parties have hereunto respectively set their hands and seals the day and year first above written.¹

J. N. [L. S.]
 F. N. [L. S.]
 M. N. [L. S.]
 J. S. [L. S.]

Sealed and delivered in presence of
 E. F.

STATE OF NEW YORK, }
 — County, } ss..

I hereby certify that on the — day of —, in the year 1—, J. N., to me known to be the person who executed the within contract, personally came before me, and on a private examination before me, acknowledged that the said

contract was by him made and executed freely, for the purposes therein expressed.²

W. G.,

Justice of the Peace.

(Acknowledgment or proof by other parties than the apprentice, as in forms Nos. 6, etc.)

1. See the notes to form No. 202, as to contents of indenture of apprenticeship, required by New York statutes.

will be of full age ; but it shall in no case be for a longer term. (2 N. Y. R. S. 155, § 12; 7th ed. 2350.) See *McNulty v. Prentice* (25 Barb. 204).

By the New York Revised Statutes any person coming from any foreign country beyond sea, may bind himself to service, if an infant, until he attain the age of twenty-one years, or for a shorter term. Such contract for service, if made for the purpose of raising money to pay his passage, or for the payment of such passage, may be for the term of one year, although such term may extend beyond the time when such person

2. No contract made under the last section, shall bind the servant, unless it be acknowledged by him before some mayor, recorder, or alderman of a city, or before some justice of the peace ; nor, unless a certificate of such acknowledgment, and that the same was made freely on a private examination, be indorsed upon such contract. (2 N. Y. R. S. 156, § 13; 7th ed. 2350.)

No. 209.

Contract of service for one year, to pay an emigrant's passage.

(2 N. Y. R. S. 156, § 12.)

As in form No. 208, to (*) and from thence as follows: That the said J. N., for the purpose of raising the sum of — dollars to pay his passage from Ireland, and in consideration that the said J. S. hath advanced and paid the same, hath bound himself, and doth hereby bind himself with the consent of his said parent (or, parents; or, guardian), to service to the said J. S., with him to dwell, continue and serve, during the term of one year from the date hereof; during all which time the said J. N. shall well and faithfully serve, etc. (concluding as in form No. 208).¹

(Signatures and seals as in form No. 208.)

Sealed and delivered in presence of

E. F.

(Acknowledgments, etc., as in forms Nos. 89, etc.)²

1. See § 12 of 2 N. Y. R. S. 155, and other statutes of that State, referred to in note 1 to last form, No. 208.

2. See § 13 of N. Y. R. S. 156, referred to in note 2 to form No. 208.

No. 210.

Assignment of an emigrant's contract of service, indorsed thereon.

(2 N. Y. R. S. 156, § 13.)

For and in consideration of the sum of — dollars to me paid, I do hereby assign, transfer and set over to A. B., of the (town) of —, in the county of —, the within contract, and all my right to the services of J. M., within mentioned, for the use and benefit of the said A. B., his executors, administrators and assigns, and the said J. M. is hereby required to render his services to the assignee accordingly. And the said A. B. covenants and agrees with the said J. S. to fulfill and perform the covenants to be performed and fulfilled for the benefit of the said J. M. in and by the indenture, from the date of this assignment.

Witness our hands and seals this — day of —, in the year 1—. ¹

J. S. [L. S.]
A. B. [L. S.]

Sealed and delivered in presence of

E. F and G. H.²

(Acknowledgment or proof as in form No. 89, etc.)

Magistrate's approval of the assignment to be indorsed on the contract (2 R. S. 156, § 14), as follows:

I approve of the assignment of the within contract, by J. S. to A. B., as above written and executed.

J. G.,
Justice of the Peace.

1. Section 14 of 2 New York Revised Statutes, page 156, provides that the contracts specified in the two last sections (forms Nos. 209, 210), may be assigned by the master, by an instrument in writing indorsed thereon, executed in the presence of two witnesses, if such assignment be approved of, in writing, by any magistrate mentioned in the preceding section (13, cited in note 2 to form No. 208), and such approbation shall be also indorsed on the contract. (N. Y. R. S., 7th ed., 2350.)

2. The statute requires two witnesses to the assignment.

No. 211.

Assignment of an indenture of apprenticeship.

Know all men by these presents, that I, the within-named A. B., for divers good causes and considerations, have assigned and set over, and by these presents (as far as I lawfully may or can), do assign and set over, the within indenture, and the apprentice therein named, unto C. D., of —, his executors, administrators and assigns, for the residue of the term within mentioned, he and they performing all and singular the covenants therein contained, on my part to be kept and performed, and indemnifying me from the same.¹

In witness, etc. (as in form No. 30.)

A. B.

1. As to the assignability of the master's interest in the services of the apprentice, the rule seems to be that an assignment, although not good as such, will yet operate as a covenant that the apprentice shall serve the party named as assignee, on which the assignee may recover against the assignor. (*Nickerson v. Howard*, 19 Johns. 113.)

If, however, the apprentice ratifies the assignment by serving the assignee, it will be sustained as an assignment, for the purpose of enabling the apprentice to gain a settlement under the poor laws, at his new residence with the assignee. (*Guilderland v. Knox*, 5 Cow. 363.)

And it will be sustained for the purpose of defeating any right of action by the apprentice to recover on an implied assumpsit for services rendered to the assignee. (*Williams v. Finch*, 2 Barb. 208.)

Upon the death of a master to whom a person has been bound to service as a clerk, apprentice or servant, by the county superintendents of the poor, or by the overseers of the poor, or in the city of New York, by the commissioners of chari-

ties and corrections, the personal representatives of the master may, with the written consent of the clerk, apprentice or servant, acknowledged before a justice of the police or police justice, assign the indenture or contract of service to another, who thereby becomes vested with all the rights of the master. (*N. Y. Code Crim. Proc.*, § 939.)

If, in the case mentioned in the last section, the written consent of the clerk, apprentice or servant be refused, the assignment may be made with the same effect, under an order of the Court of Sessions of the county, upon fourteen days' notice of the application therefor, to the apprentice, or to his parent or guardian, if there be any in the county. (*Id.*, § 940.)

Sections 41 and 42 of the New York Revised Statutes, volume 2, p. 160, are believed to have been superseded by the above sections. (See note, 7th ed. 2353.)

See also as to assignment of contracts for services made by minors coming from any foreign country beyond the seas, last form, No. 210, and notes thereto

No. 212.**Certificate of employer at the expiration of apprenticeship.**

(Laws of N. Y. of 1871, chap. 934, § 2, subd. 3.)

I, C. D., do hereby certify, pursuant to the statute in such case made and provided, that A. B. has served a full term of apprenticeship of three (or, four, or five) years, with me, at the trade or craft of a (blacksmith).

In witness whereof I have hereunto set my hand this — day of —, 1—. ¹

C. D

(Acknowledgment or proof as in forms Nos. 89, etc.)

1. See subdivision 3 of section 2 No. 202, as to such certificate and the of chapter 934 of the Laws of New contents thereof.
York of 1871, cited in note 2 to form

No. 213.**Assignment of indenture or contract of service on death of master.**

(N. Y. Code Crim. Proc., § 939.)

This indenture, made the — day of —, 1—, between A. B. (and C. D.), as executor (or, executors) of the last will and testament of E. F., late of —, deceased, (or, as administrator or administrators), of all and singular the goods, etc., of E. F., late of —, deceased), and B. R. of, etc., witnesseth :

That whereas, J. K. was by an indenture of apprenticeship (or, by a contract of service) dated —, 1—, duly apprenticed and bound to service to said E. F. as apprentice (or, clerk; or, servant), by N. M. and O. P., county superintendents of the poor of the county of — (or, overseers of the poor of the city of —; or the commissioners of charities and corrections of the city of New York). And whereas, the said E. F. departed this life on the — day of —, 1—, being at the time of his death a resident of the (town) of — in the county of —, leaving a last will and testament (or, intestate). And whereas, the said A. B. (and C. D.)

have been duly appointed the executors of said will (or, the administrators of, etc.), of said E. F., deceased :

Now, therefore, pursuant to the statute in such case made, we do hereby in consideration of the sum of (one dollar) to us in hand paid by said B. R., the receipt of which is hereby acknowledged, transfer, assign, and set over unto said B. R., with the written consent of said J. K., duly acknowledged by him and hereto annexed (or, under an order of the Court of Sessions of the county of —, a copy of which is hereto annexed), the said indenture of apprenticeship, to have and to hold to the said B. R., his executors, administrators and assigns.

In witness whereof, we have hereunto set our hands and seals, the day and year first above written.¹

A. B. [L. S.]

C. D. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment or proof as in forms Nos. 89, etc.)

(Annex consent of apprentice, form No. 214.)

1. Section 939 of the New York Code of Criminal Procedure provides that upon the death of a master to whom a person has been bound to service as a clerk, apprentice or servant, by the county superintendents of the poor, or by the overseers of the poor, or in the city of New York, by the commissioners of charities and correction, the personal representatives of the master may with the written consent of the clerk, apprentice or servant, acknowledged before a justice of the police court or a police justice, assign the indenture or contract of service to another, who

thereby becomes vested with all the rights of the master.

Section 940, id., provides that if in the case mentioned in the last section, the written consent of the clerk, apprentice or servant be refused, the assignment may be made with the same effect, under an order of the Court of Sessions of the county, upon fourteen days' notice of the application therefor, to the apprentice, or to his parent or guardian, if there be any in the county.

For forms of affidavit, notice and order upon such application, see forms Nos. 215, 216, 217.

No. 214.

Consent of apprentice, etc., to assignment of indenture.

(N. Y. Code Crim. Proc., § 939.)

I, J. K., the apprentice, etc., named in a certain indenture of apprenticeship or contract of service, dated —, 1—,

executed by me and by E. F. and G. H., county superintendents of the poor of the county of — (or, overseers of the poor of the city of —), with C. D., by which indenture I was bound as apprentice to said C. D., as specified in said indenture, do hereby consent, pursuant to statute, to the assignment of said indenture to B. R. by C. W. (and M. N.), the executor (or, executors) of the last will and testament of said C. D. [or, the administrator (or, administrators) of, etc., of said C. D.].

In witness whereof, I have hereunto set my hand this — day of —, 1—.¹

In presence of

J. K.

G. H.

(Acknowledgment as in form No. 89, which must be made before a justice of the police court or police justice.)

1. See § 939, N. Y. Code Crim. Proc., cited in note 1 to form No. 213.

No. 215.

Affidavit upon application for order of Court of Sessions, directing assignment of indenture of apprenticeship.

(N. Y. Code Crim. Proc., § 940.)

STATE OF (NEW YORK), }
County of —, } ss.:

A. B. of —, being duly sworn, deposes and says: That he is the executor (or, one of the executors) of the will of E. F., late of —, deceased (or, insert other description of deponent). That said E. F., in his life-time, entered into an indenture (or, contract of service) with J. K., and with M. N. and O. P., the county superintendents of the poor of the county of — (or, overseers of the poor of the city of —; or, commissioners of charities and correction of the city of New York), dated —, 1—, by which said J. K. was bound as an apprentice (or, clerk; or, servant), a copy of which instrument is hereto annexed, and marked schedule A. That afterward and on or about the — day of —, 1—, said E. F. departed this life, being at the time of his death a resident of the town of —, in the county of —, leaving a last will and testament (or, intestate), and that the deponent (and C. D.) has (or, have) been duly appointed the executor (or,

executors) of said will [or, the administrator (or, administrators) of, etc., of said E. F., deceased].

That the said executors (or, deponent as said executor) [or, administrators (or, deponent as said administrator)] desire to make an assignment of said indenture or contract of service, to B. R., pursuant to the statute in such case made, but that the said J. K. has refused to give his consent, in the manner required by statute, to the assignment of said indenture (or, contract).

That said B. R. is willing to take said assignment and to pay therefor the sum of — dollars.

And deponent asks that the court will make an order directing said assignment to be made.¹

A. B.

Sworn before me, this — }
day of —, 1—.

1. See §§ 939 and 940 of the New York Code of Criminal Procedure cited in note 1 to form No. 213, as to this application.

No. 216.

Notice of application for order of Court of Sessions directing assignment of indenture, etc., to be made.

(N. Y. Code Crim. Proc., § 940.)

To J. K. and to F. K., father (or, mother ; or, guardian) of said J. K.:

Take notice, that upon the affidavit of A. B., a copy of which is hereto annexed, an application will be made to the Court of Sessions of the county of —, at a term of said court to be held at the (city hall) in the city of —, in said county, on the — day of —, 1—, at the opening of the court on that day, or as soon thereafter as counsel can be heard, for an order directing the assignment of the indenture (or, contract) mentioned in said affidavit, and for such other or further relief as may be proper.¹

Dated —, 1—.

Yours, etc.,

A. B.

C. D.

(Executors of the will of E. F., deceased.)

1. See §§ 939, 940 of the New York Code of Criminal Procedure, cited in note 1 to form No. 213, as to this application.

No. 217.

Order of Court of Sessions directing assignment of indenture, etc., to be made.

(N. Y. Code Crim. Proc., § 940.)

At a Court of Sessions of the county of —, held at the (city hall) in the city of —, in said county, on the — day of —, 1—.

Present — J. C., County Judge.

M. F., Justice of the Peace.

P. C., Justice of the Peace.

In the Matter of the Application of A. B. (and C. D.), executor (or, executors) of the will of E. F., deceased, for an order directing the assignment of an indenture of apprenticeship.

On reading and filing the affidavit of A. B., the executor (or, one of the executors of the will of E. F., deceased), dated —, 1—, and notice of motion, with proof of due service of copies of said affidavit and notice upon J. K., and upon F. K., the father (or, mother; or, guardian), [or, proof by the affidavit of E. M., dated —, 1—, that the said J. K. has no parent or guardian in said county, and after hearing I. L. for the said (executor), and R. M., for said J. K. (and F. K.), (or, no one appearing to oppose):

It is hereby ordered, that an assignment be executed by said A. B., as such (executor) to B. R., upon payment of the amount specified in the said affidavit.¹

1. See §§ 939, 940, of the New York Code of Crim. Pro., cited in note to form No. 213, as to this proceeding

No. 218.

**Complaint in action against employer for neglect to teach, etc.,
apprentice.**

(Laws of N. Y. of 1871, chap. 934.)

NEW YORK SUPREME COURT, — county.

| | |
|---------------------------------|---|
| A. B., an infant, by C. D., his | } |
| guardian, plaintiff, | |
| against | |
| C. D., defendant. | |

The complaint of A. B., the above-named plaintiff, respectfully shows :

That the plaintiff is an infant, under the age of twenty-one years ; that on the — day of —, 1—, the said G. H. was appointed, upon application duly made in his behalf, as guardian *ad litem* of said plaintiff, by the — court (or, by Hon. C. C., a judge of this court ; or, by Hon. C. P., county judge of — county), by order duly entered, for the purposes of this action.¹

That heretofore and on or about the — day of —, 1—, by an agreement or indenture of apprenticeship in writing, dated that day, duly executed under seal by plaintiff and by J. B. (and C. B.), his father (and mother), [or, by C. B., his mother, (or, guardian)], and by the defendant, C. D., he, said plaintiff, was duly apprenticed to said C. D., for the term of (three) years, from the said — day of —, 1—, in the trade and business of a (blacksmith), which said C. D. was engaged in.

That it was covenanted and agreed in and by said indenture on the part of the said C. D., among other things, that he would provide at all times, during the continuance of said apprenticeship, suitable and proper board, lodging and medical attendance, for the said A. B., and would teach or cause to be carefully and skillfully taught to said A. B. every branch of said business to which the said A. B. was indentured as aforesaid.

And plaintiff further shows, that the said A. B. entered into the service of said C. D., under said indenture, as his apprentice, and has faithfully performed the covenants and agreements contained in said indenture on his part to be performed, but that the said C. D. has not performed said covenants on his part therein contained, but has, during all the term of said apprenticeship, neglected and refused to teach, or cause to be taught, to said A. B. the art or mystery of the trade or craft to which said A. B. was indentured as aforesaid (and has failed for (three months) last past to provide suitable and proper board, lodging and medical attendance for said A. B.), though often requested to do so by the said A. B.

And plaintiff further shows, that said A. B. has sustained damages by reason of said neglect and refusal to the amount of — dollars.

The plaintiff, therefore, prays judgment that he may recover from said defendant the sum of — dollars, and that the court will direct said indenture to be canceled, and will enforce a fine upon said defendant of one thousand dollars for said neglect and refusal, to be collected of him and paid over to said A. B., or, to the plaintiff for the sole use and benefit of said A. B., as provided by statute. And that plaintiff may recover against said defendant the cost of this action,² and may have such other and further relief as may be proper.

F. M., Attorney for plaintiff.

(Office address.)

— COUNTY, ss.:

A. B. of —, being duly sworn, says, that he is the plaintiff in the above-entitled action; that he has read the foregoing complaint subscribed by him, and knows the contents thereof; that said complaint is true to the knowledge of deponent, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

Sworn before me, this — }
day of —, 1—.

A. B.

1. See *Grantman v. Thrall* (44 How. Pr. 413), as to necessity of this allegation. *Barb. 173*; *Hubbard v. Young* (13

2. Section 5 of chapter 934 of the Laws of New York of 1871 provides that should any employer or employers neglect or refuse to teach, or cause to be taught to said apprentice the art or mystery of the trade or craft to which said apprentice has been indentured, or fail at any time to provide suitable and proper board, lodging and medical attendance, said apprentice, individually, or his parent or parents, guardian or guardians, may bring an action against said employer or employers, to recover damages sustained by reason of said neg-

lect or refusal ; and, if proved to the satisfaction of the court, said court shall direct said indentures to be canceled, and may impose a fine on said employer or employers, not exceeding one thousand and not less than one hundred dollars, and said fine shall be collected and paid over to said apprentice or his parent or guardian for his sole use and benefit.

The foregoing complaint may be easily adapted to the case of a suit brought by the parent or guardian of the infant.

No. 219.

Complaint against the master for cruelty, misuseage or violation of duty, where money has been paid or agreed to be paid, at the time of binding.

As in form No. 222, to (*) omitting the words " and that the said C. D. has not received, and is not entitled to receive any sum of money as a compensation for the instruction of your petitioner," and from thence as follows : That the said C. D. has already received from your petitioner (or, that there has been agreed to be paid to said C. D., by) said A. B., the sum of — dollars, on the binding out of said A. B., as compensation for his instructions [or, that said C. D. has agreed to pay your petitioner the amount of — dollars, stating agreement, as wages or compensation for his services as such apprentice (and has already paid the said A. B. the sum of — dollars, on account of said wages or compensation)]. Conclude as in form No. 222, from (*).¹

Dated —, 1 —.

A. B.

(Verification as in form No. 222.)

1. Section 934 of the New York Code of Criminal Procedure provides that where money is paid or agreed to be paid, on binding out a clerk or apprentice, he may make the complaint mentioned in section 931 (cited in note 1 to form No. 222), and

the magistrate to whom it is made must examine it, as provided in section 932 (cited in note 1 to form No. 224), and on such examination may make such order and direction between the parties, as the justice of the case may require.

No. 220.

Undertaking of master where complaint is not compromised.

(Code Crim. Proc., § 935.)

Before L. R., justice of the peace,
in the town of —, in the county of —.

In the Matter of the Complaint
made by A. B., an appren-
tice, against C. D., his mas-
ter.

Whereas, complaint on oath has been made to F. R. (a justice of the peace of the county of —,) by A. B., an apprentice, against C. D., his master, and the parties having been summoned and appeared before the said justice, and after due examination into the premises, the complaint cannot be compromised :

Now, therefore, we, E. F. (merchant), and G. H. (farmer), of, etc., do hereby jointly and severally undertake, pursuant to statute, in the sum of — dollars, that the said C. D. shall personally be and appear at the Court of Sessions of the county of —, at the next term thereof, to be held at the city of —, in and for said county, then and there to answer said complaint, and to do and receive what shall, by the court, be then and there enjoined upon him, and shall not depart the court without leave.¹

Dated —.

E. F.

G. H.

(Acknowledgment by E. F. and G. H., as in form No. 89.)

— COUNTY, ss.:

E. F. and G. H., being severally duly sworn, each for himself deposes and says: That he is one of the sureties named in the foregoing undertaking; that he is a resident of and a householder (or, freeholder), within the said county (or, within the State), and is worth the sum of — dollars (twice the sum specified in the undertaking), over all the

debts and liabilities which he owes, or has incurred, and exclusive of property exempt by law from levy and sale under execution.

Sworn to before me, this }
 — day of —, 1—. }

E. F.
 G. H.

1. Section 935 of the New York Code of Criminal Procedure provides that in the case mentioned in the last section (cited in note 1 to form No. 219), the complaint cannot be compromised, the magistrate must take a written undertaking from the master, for his appearance at the next Court of Sessions of the county, in a sum, with sureties approved by him.

No. 221.

Order of Court of Sessions on hearing of complaint, form No. 219.

(N. Y. Code Crim. Proc., § 936.)

At a Court of Sessions held in and for the county of —, at —, in the city of —, on the — day of —, 1—.

Present — J. C., County Judge,
 M. N., Justice of the Peace,
 C. F., Justice of the Peace.

In the Matter of The Com- }
 plaint of A. B., an appren- }
 tice, against C. D., his master. }

The said A. B., an apprentice under indenture dated —, 1—, having filed his complaint, under oath, pursuant to statute, before L. R. (a justice of the peace of said county of —) against said C. D., his master, who had received the sum of — dollars as a compensation for his instruction on the binding out of such apprentice (or, state agreement for payment according to the facts); that the said C. D. has cruelly beaten and wounded said A. B., being his apprentice as aforesaid (or, had misused or ill-treated said A. B., being his apprentice as aforesaid, by refusing to furnish him, the said A. B., with necessary provisions and clothing; or, state other violation of duty, in like manner), and the said parties having been summoned by said justice to appear, and having appeared before him, and the said justice having examined the said complaint, on which examination the said

complaint could not be compromised, and the said justice having thereupon taken a written undertaking pursuant to statute, from the said C. D., for his appearance at this Court of Sessions, to answer to said complaint, etc., and the testimony of the parties having been heard and considered, and the said parties having been heard by their respective counsel, it is hereby ordered, decreed and determined, by this court, that the said A. B. be discharged from the service of the said C. D.

And it is further ordered, that the said amount of — dollars, paid in binding out the said A. B. to the said C. D., be refunded by the said C. D. to the said A. B. (or, to F. B., the father, or, mother, or guardian) of the said A. B.

And it is further ordered that the said F. B., the father (or, mother, or guardian) of the said A. B., be discharged from his obligation or agreement to pay any further sum to said C. D. as a compensation for the instruction of the said A. B., and also ordered that the said indentures of apprenticeship and the securities given for such payment be forthwith given up and canceled.¹

F. M., Clerk.

1. Section 936 of the New York Code of Criminal Procedure provides agreed for in binding him out, be refunded, if paid, to the person who that upon hearing the parties, the court may, by an order entered upon the minutes, direct that the clerk or apprentice be discharged from service, and that the money paid or advanced it, or his personal representatives, or if not paid, that it be discharged, and that any security given therefor be delivered up or canceled.

No. 222.

Complaint against the master for cruelty, misusage or violation of duty, where no money has been paid or agreed to be paid for his instruction.

(N. Y. Code Crim. Proc., § 931.)

To F. R., Esq., a justice of the peace of the town of —, in the county of — [or, a police justice in the county of —, or, the mayor (or, recorder, or city judge) of the city of —]:

The petition of A. B., of the (town) of —, in said county, respectfully shows: That your petitioner was lawfully bound

as an apprentice to one C. D., by indenture of apprenticeship, bearing date on the — day of —, 1—, a copy of which said indenture is hereto annexed; that the term of apprenticeship for which your petitioner was bound has not yet expired, and that the said C. D. has not received, and is not entitled to receive, any sum of money as a compensation for the instruction of your petitioner. (*) That said C. D. has been guilty of cruelty to, and misuseage of, your petitioner in that he has cruelly beaten and wounded him (and has refused and still refuses to furnish him with necessary provisions and clothing) (or, state any other violation of duty) as is prescribed by special statutes of this State (or, by the said indentures) at —, the town of — aforesaid, on the — day of —, 1—, and at divers other times within — last past.¹

A. B.

COUNTY OF —, ss.:

A. B., being sworn, says, that the facts stated in the above petition, subscribed by him, are true.

Sworn before me, this — }
day of —, 1—.

A. B.

F. R.,
Justice of the Peace.

1. Section 931 of the New York Code of Criminal Procedure provides that if a master be guilty of cruelty, misuseage, refusal of necessary provisions or clothing, or any other violation of duty toward his apprentice or servant, as prescribed by special statutes, or by the indenture or contract of service, the apprentice or servant may make complaint on oath, to any of the magistrates mentioned in section 927 (see

note 1 to form No. 229), who must summon the defendant before him, at a specified time and place.

Where a complaint is made to a magistrate under the above section, the decision of the magistrate thereon is not reviewable on appeal. (*Killo-ran v. Barton*, 26 Hun, 648.)

See, also, § 933, *id.*, cited in note 1 to form No. 229, as to the cases to which § 931 is applicable.

No. 223.**Summons issued upon complaint, form No. 222**

(N. Y. Code Crim. Proc., § 931.)

COUNTY OF —, ss.:

In the name of the People of the State of New York, to any peace officer of the county of — (or, of the city of —), greeting:

Complaint having been made on oath by A. B., an apprentice, of the (town) of — in said county, to me, a justice of the peace in and for said county, that C. D., to whom said A. B. is lawfully bound as an apprentice, and who has not received, and is not entitled to receive, any sum of money with him, as a compensation for his instruction, has been guilty of cruelty to and misuse of said apprentice, in that he has cruelly beaten and wounded him (and has refused and still refuses to furnish him with necessary provisions and clothing) (or, state any other violation of duty as alleged in the petition), to-wit, at —, in said county, on the — day of —, 1—, and at divers other times within — past:

Now, therefore, you are hereby commanded and required to summon the said C. D. before me at my office in said town of —, on the — day of —, 1—, at — o'clock in the — noon of that day, in order that I may hear, examine and determine as to the truth of the allegations of said complaint.

Witness my hand this — day of —, 1—.¹

F. R.

Justice of the Peace.

1. See § 931 of New York Code of Criminal Procedure, cited in note 1 to last form, No. 222, and see § 933, id., cited in note 1 to form No. 229.

No. 224.**Dismissal of complaint, or discharge of apprentice.**

(N. Y. Code Crim. Proc., § 932.)

TOWN OF —, }
County of —, } ss.:

A. B., of —, having presented to me, the undersigned, a justice of the peace of said town, a complaint on oath,

that the said C. D., to whom the said A. B. was lawfully bound by indenture of apprenticeship, the term of whose service in which was still unexpired, and who had not received, nor was entitled to receive, any sum of money as a compensation for the instruction of said A. B., had been guilty of cruelty to, and misuse of said apprentice, in that he had cruelly beaten and wounded him (and had refused to furnish him with necessary provisions and clothing (or, state any other violation of duty as alleged in the petition), and the said A. B. and C. D. having been brought before me, by virtue of my summons issued upon said petition of complaint, and I having proceeded to hear the allegations and proofs of the parties, (*) I find the said C. D. to be guilty of the said acts and misdemeanors alleged in said complaint and that said complaint is well founded: Now, therefore, I do by this certificate discharge A. B., the said apprentice, from the service of his master, the said C. D., any thing in his indenture of apprenticeship to the contrary notwithstanding.

Given under my hand this — day of —, 1—. ¹

L. R.,

Justice of the Peace.

[Or, as above to (*) and from thence as follows: I find the said C. D. not to be guilty of the said acts and misdemeanors alleged in said complaint; and that said complaint is not well founded. Now, therefore, I do by this certificate, dismiss the said complaint.

Given, etc. (as in above form).

L. R.,

Justice of the Peace.]

1. Section 932 of the New York Code of Criminal Procedure provides that the magistrate must immediately, or at a time to which he may, for good cause, adjourn the matter, proceed to hear the allegations and proofs of the parties, and if the complaint be well founded, must, by a certificate under his hand,

with his name of office, discharge the apprentice or servant from the service of his master; or, if not, he must, by a similar certificate, dismiss the complaint.

See, also, § 933, *id.*, cited in note 1 to form No. 229, as to the cases to which the above cited section is applicable.

No. 225.

Complaint against apprentice or servant for absenting himself or refusing to serve, or for a misdemeanor or ill-behavior, where money has been paid or agreed to be paid by or to the master.

(N. Y. Code Crim. Proc., § 937.)

As in form No. 229, to (*), omitting therefrom the words, "who has not received and is not entitled to receive any sum of money with him, as a compensation for his instruction." And from thence as follows: That your petitioner has already received from (or, That there has been agreed to be paid to your petitioner by) said A. B., the sum of — dollars, on the binding out of said A. B., as compensation for his instructions [or, That your petitioner has agreed to pay the said A. B. the amount of — dollars (stating agreement) as wages or compensation for his services as such apprentice (and has already paid the said A. B. the sum of — dollars on account of said wages or compensation)]. Concluding as in form No. 229, from (*).¹

Dated —, 1 —.

C. D.

(Verification as in form No. 222.)

1. Section 937 of the New York Code of Criminal Procedure provides that the master of a clerk or apprentice, where money is paid or agreed for on binding him out, may make the complaint mentioned in section 927, and the magistrate to whom it is made must proceed thereupon, as provided in sections 927 to 930, both inclusive, and may discharge the complaint, or if in his opinion it be well founded may take a written undertaking, in a sum and with sureties to be approved by him, for the appearance of the clerk or apprentice at the next Court of Sessions of the county.

No. 226.

Warrant upon filing of complaint, form No. 225.

(N. Y. Code of Crim. Proc., §§ 930, 937.)

COUNTY OF —, ss. :

In the name of the People of the State of New York, to any peace officer of the county of — (or, city of —), greeting :

Complaint on oath having been made to me (a justice of the peace of said county) by C. D., of the (town) of —, in

said county, that A. B., an (apprentice) of said C. D., whose term of service is still unexpired, and for whose instruction the said C. D. has received the sum of — dollars (or, is entitled to receive the sum of — dollars at the expiration of said apprenticeship), has willfully absented himself from the service of his said master, without the leave of his said master, and has refused to return thereto (or, state other violation of duty), as he is required by law, and by the terms of his apprenticeship to do [or, has been guilty of a misdemeanor, to-wit (stating same), or of ill-behavior, to-wit (stating same)].

Now, therefore, you are hereby commanded, etc. (concluding as in form No. 230).¹

F. R.,
Justice of the Peace.

1. See §§ 929 and 937 of New York Code of Criminal Procedure, cited respectively in note 1 to form No. 230, and in note 1 to form No. 225, as to this warrant.

No. 227.

Undertaking to be given by clerk or apprentice for his appearance at Court of Sessions, where money has been paid or agreed for on binding him out.

(N. Y. Code Crim. Proc., § 937.)

Before F. R., justice of the peace.

| | |
|---|---|
| In the Matter of the Com- plaint made by C. D., master, against A. B., his apprentice. | } |
|---|---|

Whereas, complaint on oath has been made to F. R., a justice of the peace of the county of —, by C. D., a master, against A. B., his apprentice, under indentures dated —, 1—, and the defendant having been brought before said justice, and said justice having proceeded to hear the allegations and proofs of the parties, and after due examination into the premises, the complaint being in his opinion well founded :

Now, therefore, we, E. F., merchant, and G. H., farmer, of, etc., do hereby jointly and severally undertake, pursuant to

statute, in the sum of — dollars, that if said A. B. shall personally be and appear at the Court of Sessions of the county of —, at the next term thereof, to be held at the city of —, in and for the said county, then and there to answer said complaint, and to do and receive what shall, by the court, be then and there enjoined upon him, and shall not depart the court without leave.¹

Dated —, 1—.

E. F.

G. H.

(Acknowledgment as in forms Nos. 89, etc.)

(Affidavit of justification by sureties as in form No. 220.)

1. See § 937 of New York Code of Crim. Proc., cited in note 1 to form No. 225.

No. 228.

Order of court on hearing of complaint, form No. 225.

(N. Y. Code Crim. Proc., § 938.)

At a Court of Sessions held for the county of —, at —, in the city of —, in said county, on the — day of —, 1—:

Present — J. C., County Judge.

P. F., Justice of the Peace.

B. N., Justice of the Peace.

In the Matter of the Com-
plaint of C. D., a master,
against
A. B., his apprentice. }

The said C. D. having filed his complaint under oath, before L. R. (a justice of the peace of said county of —), against said A. B., his apprentice, setting forth that said A. B. being lawfully bound under indentures, dated —, 1—, to serve the said C. D., as prescribed by special statutes of this State, the said C. D. having received with said apprentice the sum of — dollars as a compensation for his instruction on his binding out (or, state agreement for payment, according to the facts) the said A. B. had willfully absented himself from his service, without the leave of his said master, and had refused to return thereto [or, had been guilty of a

misdemeanor, to-wit: (stating same); or, of ill-behavior, to-wit: (stating same)], and the said L. R. having caused the said A. B. to be brought before him, and having proceeded to hear the allegations and proofs of the parties, and the said complaint having appeared to said justice to be well founded, and the said justice having thereupon taken a written undertaking pursuant to statute, for the appearance of the said A. B., at this Court of Sessions of said county, to answer to the aforesaid complaint, and now the testimony of the several parties having been duly submitted, and the said parties having been heard by their respective counsel, it is hereby ordered and decreed (*) that the said A. B. be fined in the sum of — dollars, and that he stand imprisoned in the county jail of said county till the same be paid, and until he shall consent to serve the said C. D.¹

1. Section 938 of the New York Code of Criminal Procedure provides that upon hearing the parties the court may proceed as in section 936 (cited in note 1 to form No. 221), and may punish the clerk or apprentice by fine or imprisonment, or both, as for a misdemeanor.

No. 229.

Complaint against apprentice or servant for absenting himself, or refusing to serve, or for a misdemeanor or ill-behavior, where no money has been paid or agreed to be paid for his instruction.

(N. Y. Code Crim. Proc., § 927.)

To F. G., Esq., Justice of the Peace, of the town of —, in the county of — (or, police justice in the county of —; or, mayor, recorder, or city judge of the city of —).

The petition of C. D., of said town, respectfully shows, that by an instrument in writing dated —, 1—, one A. B. was apprenticed to your petitioner, as appears from the said instrument, a copy of which is hereto annexed; that said term of apprenticeship has not yet expired, and that said A. B. refuses to serve your petitioner, who has not received, and is not entitled to receive, any sum of money with him, as a compensation for his instruction, as he is required to do in and by the terms of the said indenture (or, willfully absents

himself from the service of your petitioner, his said master, without the leave of his said master, and refuses to return, or, has been guilty of a misdemeanor (or, ill-behavior), to-wit: (stating same), (*) and your petitioner asks that a warrant may issue to apprehend the said A. B., and bring him before you, that he may answer for his refusal or neglect in the premises (or, for said ill-conduct or misdemeanor).¹

Dated —, 1—.

C. D.

COUNTY OF —, ss.:

C. D., the above-named petitioner, being sworn, says he has read the foregoing petition by him subscribed, and that he knows the contents thereof, and that the facts and circumstances therein stated are true.

C. D.

Sworn before me, this }
— day of —, 1—. }

F. G.,

Justice of the Peace.

1. Section 927 of the New York Code of Criminal Procedure provides that if an apprentice or servant, lawfully bound to serve as prescribed by special statutes, willfully absent himself therefrom, without the leave of his master, or refuse to serve according to his duty, or be guilty of any misdemeanor or ill-behavior, his master may make complaint of the facts under oath, before

a justice of the peace or police justice in the county, or before the mayor, recorder or city judge of the city where he resides.

Section 933, id., provides that the preceding sections (§§ 927-932) of that title (9 of part 6) do not extend to an apprentice, whose master has received, or is entitled to receive, a sum of money with him, as a compensation for his instruction.

No. 230.

Warrant, when complaint is made in the absence of the defendant.

(N. Y. Code Crim. Proc., § 928.)

— COUNTY, }
Town of —, } ss.:

In the name of the People of the State of New York, to any peace officer of the county of — (or, of the city of —), greeting:

A. B., a person lawfully bound to service as prescribed by special statutes, having willfully absented himself therefrom,

without the leave of his master, C. D., and having refused to return (or, state other facts proven to the magistrate), and his said master, who has not received, and is not entitled to receive, any sum of money with him, as a compensation for his instruction, having made his complaint thereof under oath to the undersigned, a (justice of the peace of the said town and county) in the absence of the defendant, and said facts having been proven to my satisfaction :

You are, therefore, hereby commanded to arrest the said A. B. and to bring him before me at my office in the said town of — forthwith (or, on the — day of —, 1—, at — o'clock in the — noon,) to answer the said complaint.

Given under my hand, this — day of —, 1—. ¹

F. G.,

Justice of the Peace.

1. Section 928 of the New York Code of Criminal Procedure provides that if the complaint be made in the absence of the defendant, and the facts be proved to the satisfaction of the magistrate, he must issue a warrant, signed by him, with his name of office, to a peace officer of the county or city, commanding him to arrest the defendant and bring him before the magistrate forthwith,

or at a specified time and place, to answer the complaint.

Section 929, id., provides that the peace officer must accordingly execute the warrant by arresting the defendant and taking him before the magistrate.

See, also, § 933, id., cited in note 1 to last form, No. 229, as to cases to which this proceeding is applicable.

No. 231.

Commitment or discharge of defendant by magistrate.

(N. Y. Code Crim. Proc., § 930.)

In the name of the People of the State of New York, to any peace officer of the county of — (or, of the city of —), greeting :

A. B., a person lawfully bound to service as prescribed by special statutes of the State of New York, having willfully absented himself therefrom without the leave of his master, C. D., and having refused to return (or, state other facts), and his said master, who has not received and is not entitled to receive any sum of money with the said A. B., as a compensation for his instruction, having made his complaint thereof,

under oath, to the undersigned, a (justice of the peace of the said town and county), in the absence of the said defendant, and I thereupon having issued my warrant, pursuant to statute, for the arrest of said defendant, and he having been brought before me at this time and place (or, on the — day of —, 1—), pursuant to the directions of said warrant (and said matter having been for good cause duly adjourned to this time and place), and I having proceeded to hear the allegations and proofs of the parties, they being present, (*) and the said complaint appearing to be well founded :

You are, therefore, hereby commanded to deliver the body or person of the said A. B., at the county jail of said county, to the sheriff of the said county, or to the keeper of said jail (or, at the city prison of the city of New York, to the keeper of said prison), who are respectively (or, who is) required to receive him, the said A. B., and to commit and imprison him, the said A. B., in the said county jail (or, city prison), there to remain for (one month) at hard labor, and where he must be confined in a room with no other person.

Given under my hand, this — day of —, 1—. ¹

F. G.,
Justice of the Peace.

[Or, as above, to (*), and from thence as follows : I do hereby by this, my certificate, made pursuant to statute, discharge the said defendant, A. B., from the service of his said master, C. D., and the said master from all obligations to the said defendant.

Given, etc. (as in above form).

F. G.,
Justice of the Peace.]

1. Section 930 of the New York Code of Criminal Procedure provides that the magistrate must immediately, or at a time to which he may, for good cause, adjourn the matter, proceed to hear the allegations and proofs of the parties, and if the complaint appear to be well founded, must commit the defendant to the county jail, or in the city of New York, to the city prison of that city, for not exceeding one month, at hard labor, where he must be confined in a room with no other person; or may, by a certificate, signed by him with his name of office, discharge the defendant from the service of his master, and the master from all obligations to the defendant. See, also, § 933, id., cited in note 1 to form No. 229, as to the proceedings to which that section is applicable.

Appointments.

See GUARDIAN AND WARD

Arbitration and Award.

Agreement for submission — *See* AGREEMENTS.

Arbitration bond — *See* BONDS.

Award by arbitrators — *See* AWARD.

Notice of revocation to arbitrators and to parties — *See* AWARD

Oaths in arbitration proceedings — *See* OATHS.

CHAPTER VII.

Forms of Assignments.

- No. 233. Assignment of copyright in a book, for one edition, or in full.
234. Assignment of partnership property by one partner to the other, on dissolution.
235. Assignment by partners, each to the other, of debts owing to them jointly.
236. Assignment of a bond or other instrument for the payment of money.
237. Assignment of a bond, or other instrument indorsed thereon
238. Assignment of a mortgage.
239. Same, another form.
240. Assignment of a bond and mortgage, with covenants.
241. Assignment of a bond and mortgage as collateral security for a debt.
242. Assignment of a demand as collateral security for an indorsement.
243. Assignment of a demand as collateral security for a promissory note, etc.
244. Assignment of a judgment.
245. Same, short form.
246. Same, another form.
247. Assignment of dower.
248. Assignment by lessee of lease under seal.
249. Assignment of lease by indorsement.
250. Assignment of lease by executor of lessee.
251. Assignment of a patent right, or of an interest therein.
252. Assignment of book account.
253. Assignment of a man's whole estate in consideration of certain specified debts.
254. Assignment of indenture of apprenticeship (reference to No. 211).
255. Assignment by old sheriff to the new sheriff.
256. Assignment of entire or part interest in invention.
257. Assignment of entire interest in invention, with certificate of record in United States patent office.
258. Assignment of part interest in invention, with certificate of record in United States patent office.

No. 233.

Assignment of copyright in a book, for one edition, or in full.

This indenture, made this — day of —, in the year —, by and between A. B., of —, of the first part, and C. D. and E. F., of —, booksellers and copartners, under the style and firm of C. D. & Co. of the second part, witnesseth :

First. That the said A. B., for the considerations hereinafter mentioned, doth hereby license and authorize the said C. D. & Co., or their legal representatives, to print, publish and sell [an edition of five hundred and twenty copies of (each volume of)], a work now in preparation by the said A. B., to be called (here insert the title of the work) [the said A. B. hereby reserving to himself the general copyright in said work].

Second. That the said C. D. & Co., in consideration of the license aforesaid, do hereby covenant and agree, for themselves and their legal representatives, to and with the said A. B. and his legal representatives, that they will publish the said work as soon as practicable after they shall receive the manuscript, in good style and in such manner as they shall deem expedient, and will keep the market at all times fully supplied therewith, and will pay to said party of the first part, or his legal representatives, the sum of — (per volume) (or, — per cent upon the regular retail price of said book) for each and every copy of the said [five hundred and twenty copies of the said] book, payable semi-annually as fast as the said copies shall be sold, or otherwise disposed of, they rendering to said A. B. an account of sales of the said work [accompanied with the certificate of the printer to the number printed (or, and exhibiting to him on request their manufacturer's books showing the number printed)]¹ at the expiration of each six months from the day of the first publication [until the whole shall be sold] and that they will give to said A. B., or his representatives, the said twenty copies handsomely bound, free of charge (to be disposed of by him or them as may best promote the sale of said work).

[*Third.* That the said C. D. & Co., in consideration also

of the aforesaid license, for themselves and their legal representatives, covenant and agree that they will not print, publish or sell any more than the said five hundred and twenty copies until authorized so to do by the said A. B., or his legal representatives, in writing; it being understood that the license herein contained extends only to one edition of the number of copies above specified.]

Fourth. That the said A. B., in consideration of the payments above agreed and covenanted to be made by said C. D. & Co., and of the said twenty copies, for himself and his legal representatives doth hereby covenant and agree with the said C. D. & Co. and their legal representatives, that he will furnish to the printer to be employed by them, fair copy of the said work, and will superintend the printing, and correct the proofs thereof in the usual manner; and that he will take out the usual evidences of copyright, for the protection of said work, and will not authorize any person to print, publish or sell, and will not himself print, publish or sell any other copies of the said work [until the whole of the said five hundred copies shall have been sold or disposed of by the said C. D. & Co., or their legal representatives].

In case of non-performance by the said parties of the second part, of either of the provisions of this contract, on their part to be performed, then their right to publish and sell the said book shall be forfeited and shall revert to the party of the first part; who shall then have the right of purchasing the plates (and engravings) then used in publishing the work at a fair valuation.

In testimony whereof, etc. (as in form No. 163).²

A. B. [L. S.]

C. D. & Co. [L. S.]

Sealed and delivered in presence of

E. F.

(Acknowledgment or proof as in forms Nos. 6, etc.)

1. These words in brackets are to be inserted in case the contract is for the entire copyright of the work.

2. It is provided by United States Revised Statutes, Supp. No. 1, 40 (act of June 18, 1874, chap. 301, § 1),

as follows: "No person shall maintain an action for the infringement of his copyright unless he shall give notice thereof by inserting in the several copies of every edition published, on the title page, or the page

immediately following, if it be a book; or if a map, etc., by inscribing upon some visible portion thereof, or of the substance on which the same shall be mounted, the following words, viz.: 'Entered according to act of Congress, in the year —, by A. B., in the office of the librarian of Congress, at Washington;' or at his option, the word 'Copyright,' together with the year the copyright was entered, and the name of the party by whom it was taken out; thus, 'Copyright, 18—, by A. B.'"

By section 4956 of the United States Revised Statutes, it is provided "that no person shall be entitled to a copyright unless he shall, before publication, deliver at the office of the librarian of Congress, or deposit in the mail addressed to the librarian of Congress at Washington, District of Columbia, a printed copy of the title of the book or other article, or a description of the painting, etc., for which he desires a copyright, nor unless he shall also, within ten days from the publication thereof, deliver at the office of the librarian of Congress at Washington, District of Columbia, two copies of such copyright book or other article, or in case of a painting, etc., a photograph of the same."

Under these provisions, to secure a copyright in a book or dramatic composition: 1. The title page must be filed with the librarian of Congress; 2. The work must be published within a reasonable time thereafter; and, 3. Within ten days from the publication thereof, two copies must be mailed to the librarian. (*Boucicault v. Hart*, 13 Blatchf. 47.)

Publication and delivery of two copies are as much a condition to the creation of a valid copyright, as is the filing of a copy of the title page. (*Id.*)

The requirement of section 1 of the act of 1874, above mentioned, that the notice of entry of copyright to be inserted in or inscribed on copies of the work, shall contain the "name of the party" by whom it was taken out, is sufficiently complied with by giving the surname and initial of the Christian name. This fully secures the object intended by the law, which is to give notice to the public, by placing upon each copy, in some visible shape, the name of the author, the existence of a claim of exclusive right and the date at which this right was obtained. Thus the words "Copyright, 1882, by N. Sarony," are a sufficient imprint in the case of a photograph. (*Burrow-Giles Lithographic Co. v. Sarony*, 111 U. S. 53; *aff'g Sarony v. Burrows-Giles Lithographic Co.*, 17 Fed. Rep. 591.)

See also *Dwight v. Appleton* (1 N. Y. Leg. Obs. 195); *Myers v. Callaghan* (10 Biss. 139); U. S. R. S., § 4963.

Copyrights shall be granted for the term of twenty-eight years from the time of recording the title thereof, as provided by section 4956, United States Revised Statutes. (U. S. R. S., § 4953.)

The author, etc., if he be still living and a citizen of the United States or resident therein, or his widow or children, if he be dead, may have the same exclusive right continued for the further term of fourteen years, upon recording the title of the work or description of the article so secured a second time, and complying with all other regulations in regard to original copyrights, within six months before the expiration of the first term. And such person shall, within two months from the date of said renewal, cause a copy of the record thereof to be

published in one or more newspapers, printed in the United States, for the space of four weeks. (U. S. R. S., § 4954.)

As to construction of a similar statute (of 1790), see *Wheaton v. Peters* (8 Pet. 591).

Copyrights are assignable in law, by any instrument of writing, and such assignment must be recorded in the office of the librarian of Congress within sixty days after its execution; in default of which it shall be void as against any purchaser or mortgagee for a valuable consideration, without notice. (U. S. R. S., § 4955.)

A contract between author and publisher, for the publication of a book, which does not purport to convey the copyright, need not be under seal, nor attested by witnesses. (*Pulte v. Derby*, 5 McLean, 328.)

The transfer of an exclusive literary right, for a limited locality, operates, *at law*, as a mere license; and is ineffectual as an assignment. But,

in equity, a limited local, or other partial assignment of a copyright, if made for a valuable consideration, will be carried into effect, whether it would be effectual in law or not. (*Keene v. Wheatley*, 9 Am. Law Reg. 33.)

An assignment of an existing copyright, without words looking beyond the existing term, and without a consideration extending beyond that, is not to be extended by construction to pass the right to a renewal; nor does a usage among booksellers to regard the renewal as passing by such assignment, affect the question, unless the parties are both acquainted with the usage, or belonged to the trade. (*Pierpont v. Fowle*, 2 Woodb. & M. 23.)

See, also, *Cowen v. Banks* (24 How. Pr. 72); *Paige v. Banks* (13 Wall. 608, aff'g 7 Blatch. 152); *Roberts v. Myers* (13 Law Rep. 396); *Mackay v. Mallony* (12 Fed. Rep. 328); *Boucicault v. Fox* (5 Blatch. 87), as to construction of assignments of copyright.

No. 234.

Assignment of partnership property by one partner to the other, on a dissolution.

Whereas, a copartnership has heretofore existed between J. D. and R. R., both of, etc., which copartnership has been known under the name of D. & R., and which it is the intention of the said copartners forthwith to dissolve and determine:

Now, this indenture of two parts, made this — day of —, in the year 1—, by and between the said J. D. of the one part, and the said R. R. of the other part, witnesseth:

First. That the copartnership aforesaid is hereby, by the mutual consent of the said parties, dissolved and determined.

Second. The said J. D. doth hereby sell, transfer, assign, and set over unto the said R. R., his moiety of all the stock

in trade, goods, merchandise; effects and property of every description, belonging to or owned by the said copartnership, wherever the same may be, together with all debts, choses in action, and sums of money due and owing to the said firm, from any and all persons whomsoever, to hold the same to the said R. R., and his assigns forever, in trust, for the following purposes, namely: That the said R. R. shall sell and dispose of all the goods, property and effects belonging to the said firm, at such time and in such manner as he may deem prudent; and shall, with reasonable diligence, collect all the debts and sums of money due and owing to the said firm; and shall, out of the proceeds of the said sales, and with the money thus collected, pay and discharge all the debts and sums of money now due and owing from the said firm, as far as the proceeds of said sales and the sums of money collected will go; and, after fully satisfying all demands against the said firm, if there be any surplus, shall pay over one moiety thereof to the said J. D., or his assigns.

Third. The said J. D. doth hereby constitute and appoint the said R. R., his attorney irrevocable, in his the said R. R.'s own name, or in the name of the said firm, to demand, collect, sue for and receive any and all debts and sums of money due and owing to the said firm; to institute and prosecute any suits for the recovery of the said debts, or to compound the same, as he may judge most expedient; to defend any and all suits against the said firm; to execute all such paper writings and acquittances as may be necessary; and generally to do all such acts and things as may be necessary or proper for the full and complete settlement of all business and concerns of the said copartnership.

Fourth. The said R. R., for himself and his heirs, executors and administrators, hereby covenants to and with the said J. D. and his assigns, that he will sell and dispose of all the partnership property and effects to the best advantage; that he will use his best diligence and endeavors to collect all debts and sums of money due and owing to the said firm; and that he will truly and faithfully apply the proceeds of said sale, and the moneys collected, to the payment, discharge and satisfaction of all debts and demands against the

said firm, as far as the same will go; and, after discharging all such debts, will pay over to the said J. D., or his assigns, one moiety of any surplus that may remain; and further, that he will keep full and accurate accounts of all moneys received by him for goods sold, or debts collected, as well as of moneys paid out; and will render a just, true and full account therefor to the said J. D., or his assigns.

Fifth. The said J. D., for himself, his, etc., covenants with the said R. R., his, etc., that upon settlement of accounts, if it shall be found that the debts due and owing from the said firm exceed the amount of moneys received from the sales of the said goods, and the debts collected, he will pay unto the said R. R., or his assigns, one moiety of any balance that may then be due and owing from the said firm.

In witness, etc. (as in form No. 163).

J. D. [L. S.]
R. R. [L. S.]

Sealed and delivered in presence of
A. F.

(Acknowledgment or proof by both parties, as in forms Nos. 6, etc.)

No. 235.

Assignment by partners of debts owing to them jointly.

This indenture, made, etc., between A. B., etc., of the one part, and C. D., etc., of the other part: Whereas, the said parties were lately copartners in the trade of —, which partnership is determined and dissolved; and whereas, several debts owing to the said parties on account of their late partnership are still standing out and unreceived, which are mentioned in two schedules hereon indorsed; and they have agreed to divide the same in manner as hereunder is mentioned, viz.: The said A. B. is to have and receive the debts mentioned in the first schedule hereon indorsed, to his own use; and the said C. D. is to have and receive the debts mentioned in the second schedule hereon indorsed:

Now, therefore, these presents witness, that in pursuance of the said agreement, and in consideration of one dollar in

hand paid to the said A. B. by the said C. D., he, the said A. B., doth hereby fully and absolutely assign and release unto the said C. D., his, etc., to his and their own proper use and uses, without any account to be made or given for and concerning the same, all his right, title, claim, interest, part, share, benefit and demand whatsoever, of, in and to the several demands and sums of money due and owing to the said parties on the joint account as aforesaid, mentioned in the said second schedule, hereon indorsed by virtue of the said copartnership or otherwise howsoever: And the said A. B. doth hereby make and appoint the said C. D. his, etc. (letter of attorney), to receive the said debts mentioned in the said schedule, to his and their own use and uses as aforesaid, from the several persons therein mentioned, and all others whom it may concern, and upon receipt, etc. And these presents further witness, that in pursuance of the agreement aforesaid and in consideration of one dollar to the said C. D. in hand paid by the said A. B., etc. (C. D. in like manner assigns to A. B. the debts mentioned in the first schedule, and empowers him to receive the same, etc.) And each of them, the said A. B. and C. D., for himself, his executors, etc., doth hereby covenant, etc., to and with the other of them, his executors, etc., as follows, that is to say, that neither of them, the said A. B. nor C. D., hath at any time before received, released or discharged the debts hereinbefore assigned, and released to the other of them, nor any of them, nor any part thereof; and that neither of them, his executors, etc., will at any time hereafter receive, etc., the debts, by them respectively assigned to the other of them, or any part thereof, or commence any action, suit or process for the recovery and receiving thereof, but at the request and with the consent in writing for that purpose, under the hand and seal of the other of them, his executors, etc. And that either of them, his executors, etc., shall and will at the request and charge of the other of them, his, etc., do any further act for the better and more perfect assigning, releasing and confirming the debts hereinbefore assigned by them respectively unto the other of them, his, etc., and for the enabling him and them to receive and recover the same to his and their own use and

uses as aforesaid, as shall be reasonably required. And lastly, that in case it shall appear that either of the said parties hath received any of the debts hereinbefore assigned to the other of them, or any part thereof, in such case, such of the said parties who shall so have received the same, his executors, etc., shall and will pay and make good the full debts, so by him received or discharged, to the other of them, his executors, etc., within one month after notice thereof, to him or them to be made or given.

In witness, etc. (as in form No. 163).

A. B. [L. S.]

C. D. [L. S.]

(Acknowledgment or proof, as in forms Nos. 6, etc.)

No. 236.

Assignment of bond, or other instrument for the payment of money.

Whereas, A. B., of, etc., in and by one bond or obligation, bearing date on the — day of —, 1—, became bound to C. D., of, etc., in the penal sum of — dollars, conditioned for the payment of — dollars and interest, at a day since past (or, otherwise describe instrument assigned), as by the said (bond and condition thereof) may appear. And whereas, there now remains due to the said C. D., for principal and interest on the said (bond), the sum of — dollars:

Now know all men by these presents, that the said C. D., for and in consideration of the said sum of — to him in hand paid by E. F. of —, the receipt whereof the said C. D. doth hereby acknowledge, he, the said C. D., hath assigned and set over, and by these presents doth assign and set over unto the said E. F. the said recited (bond or obligation), and the moneys thereupon due and owing; and all his right and interest of, in, and to the same. And the said C. D., for the consideration aforesaid, hath made, ordained, constituted and appointed, and by these presents doth make, etc., the said E. F., his executors and administrators, his true and lawful attorney and attorneys, irrevocable, for him and in his name, and in the name and names of his executors and administrators, but

for the sole and proper use and benefit of the said E. F., his executors, administrators and assigns, to ask, require, demand and receive of the said A. B., his heirs, executors and administrators, the money due and to become due on the said (bond), and on non-payment thereof, to sue for, recover and receive the same. And on payment thereof, to deliver up and cancel the said (bond), and give sufficient releases and discharges thereof, and one or more attorney or attorneys under him to constitute; and whatsoever the said E. F., or his attorney or attorneys, shall lawfully do in the premises, the said C. D. doth hereby allow and confirm. And the said C. D. doth covenant with the said E. F. that he, the said C. D., hath not received, nor will receive, the said moneys due on the said (bond), nor any part thereof, neither shall or will release or discharge the same, or any part thereof, but will own and allow of all lawful proceedings for recovery thereof, he, the said E. F., saving the said C. D. harmless, of and from any costs that may happen to him thereby.

In witness whereof, etc. (as in form No. 30).

C. D. [L. s.]

Sealed and delivered in presence of

E. F.

(Acknowledgment by C. D., or proof by E. F., as in forms Nos. 6, etc.)

No. 237.

Assignment of a bond or other instrument indorsed thereon.

Know all men by these presents, that I, the within-named A. B., in consideration of the sum of — dollars, to me in hand paid by C. D., the receipt whereof I do hereby acknowledge, have bargained, sold and assigned, and by these presents do bargain, sell and assign, to the said C. D., his executors, administrators and assigns, the within written obligation or bond (or, name other instrument) (and condition), and all sum and sums of money due and to grow due on the same. And I do covenant with the said C. D. that there is now due on the said obligation or bond (etc.), (ac-

ording to the condition thereof) for principal and interest, the sum of — dollars, and I do authorize the said C. D., in my name, to demand, sue for, recover, receive, and enjoy the moneys due and to become due as aforesaid.

A. B. [L. S.]

Sealed and delivered in presence of

E. F.

(Acknowledgment by A. B., or proof by E. F., as in forms Nos. 6, etc.)

No. 238.

Assignment of a mortgage.

Know all men by these presents, Whereas, A. B. of, etc., on the — day of —, 1—, by his deed of mortgage of that date, for the consideration of — dollars, did grant, bargain, sell and convey unto me, C. D., of —, my heirs and assigns, all and singular the premises described as follows: (Here describe same.) To have and to hold the same, to me, the said C. D., my heirs and assigns forever, upon condition (here recite the conditions):

Now, therefore, I, the said C. D., in consideration of the sum of — dollars to me in hand paid, before the ensealing hereof, by W. S., of, etc., do by these presents, grant, bargain, sell, transfer, assign and make over unto the said W. S., his heirs and assigns forever, the said above-described premises, to have and to hold the same to him, the said W. S., his heirs and assigns forever, as fully, and in as ample a manner, as I, the said C. D., my heirs or assigns, might hold and enjoy the same by virtue of the mortgage deed aforesaid and not otherwise. And I do, for myself, my heirs, executors and administrators, hereby authorize and empower the said W. S., his heirs, executors and administrators, to receive to his and their own use, the sum or sums mentioned in the condition of said deed, whenever the same shall be tendered, or paid to him or them, by the said A. B., his heirs, executors or administrators, agreeably thereto, and to discharge the said mortgage, or to take and pursue such other steps and means for the recovery of the said sum or sums, with the interest, by sale of the said mortgaged premises, or otherwise, as by law is

provided, as fully to all intents and purposes, as I, the said C. D., my heirs, executors or administrators, might or could do in the premises.¹ And I do, for myself, my heirs, executors and administrators, covenant with the said W. S., his heirs and assigns, that I have good right to assign the said premises as aforesaid, and that he, the said W. S., shall and may have, hold, occupy, possess and enjoy the same (subject, however, to the right of redemption, as by law in such cases provided), against the lawful claim of all persons.

In witness, etc. (as in form No. 30).²

C. D. [L. S.]

Sealed and delivered in presence of

E. F.

(Acknowledgment by A. B., or proof by E. F., as in forms Nos. 6, etc.)

1. The Revised Statutes of the State of New York (Art. 3, Title 2 of Chap. 1 of Part 1, § 133), provide that where a power to sell lands shall be given to the grantee, in any mortgage or other conveyance intended to secure the payment of money, the power shall be deemed a part of the security, and shall vest in, and may be executed by any person, who, by assignment or otherwise, shall become entitled to the money so secured to be paid. (1 N. Y. R. S. 737; 7th ed. 2194.)

2. By section 139 of article 4 of same title, no mortgage shall be construed as implying a covenant for the payment of the sum intended to be secured; and where there shall be no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage. (Id. 738; 7th ed. 2195.)

The assignment of a mortgage given without bond or other extrinsic writ-

ten evidence of the debt secured, and containing no express covenant to pay, transfers to the assignee all the mortgagee's claim under the mortgage, viz.: His remedy against the land. (*Severance v. Griffith*, 2 Lans. 38.)

See, also, notes to form No. 239, and see *Gaylord v. Knapp* (15 Hun, 87); *Caryl v. Williams* (7 Lans. 416); *Mack v. Austin* (29 Hun, 534; aff'd, S. C., 95 N. Y. 513); *Spencer v. Spencer* (95 N. Y. 353).

Although it seems (see *Cooper v. Newland*, 17 Abb. 342; *Merritt v. Bartholick*, 47 Barb. 256; S. C. aff'd, 36 N. Y. 44) that an assignment of a mortgage alone without the bond accompanying it is a nullity, yet, where the bond was, in fact, transferred with the mortgage, although not mentioned in the written assignment, and was actually delivered with the mortgage and assignment, the transfer is valid, and the registry of such assignment is sufficient notice of the fact. (*Yates County National Bank v. Baldwin*, 43 Hun, 136.)

No. 239.

Assignment of mortgage, another form.

For and in consideration of the sum of — dollars, to me paid, I, O. P., of the (town) of —, etc., do hereby grant, bargain, sell, assign and set over unto C. D., of, etc., a certain indenture of mortgage, executed by A. B., and M., his wife, of the (town) of —, in the county of —, bearing date the — day of —, 1—, to the said O. P., on certain lands in the town aforesaid, together with the bond therein referred to,¹ and which said mortgage is recorded in Book of Mortgages No. —, on pages —, etc., in the office of the (clerk) of the county of —, to have and to hold the said bond and mortgage, and the debt thereby secured (and all the interest conveyed by the mortgage in and to the lands therein described)² to the said C. D., his heirs, executors, administrators and assigns forever, for his and their use and benefit. And I do hereby covenant to and with the said C. D., that the sum actually due on the said bond and mortgage amounts, principal and interest, to — dollars, and that I have good right to assign the same. And the said C. D. is hereby authorized to receive and enforce the payment of the said money by all lawful ways and means, in law or equity; but this assignment is made in all respects, except as above stated, at the risk of the said C. D., and the debt is to be collected at his expense and not mine.

In witness whereof, I have hereunto set my hand and seal, this — day of —, in the year —.³

O. P. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment by O. P., or proof by G. H., as in forms Nos. 6, etc.)

1. See *Yates Co. Nat. Bank v. Baldwin* (43 Hun. 136), cited in note 2 to form No. 238.

2. The law is well settled in New York State, that a mortgage, both at law and in equity, is a mere security

or pledge of the land covered by it, for the money borrowed or owing, and referred to in it, and that the mortgagor remains the owner of the estate mortgaged, and may maintain trespass as against even the mort-

gagee. The mortgagee has but a chattel interest. (*Kortright v. Cady*, 21 N. Y. 343, 347; *Runyan v. Mersereau*, 11 Johns. 534; *Odell v. Montross*, 68 N. Y. 499, 503.)

The assignment of the debt draws the land after it, as a consequence, the debt being considered the principal and the land as an incident only. (*Runyan v. Mersereau*, *supra*.)

It is not usual, therefore, in that State, to insert in assignments of bonds and mortgages any conveyance of the interest of the mortgagee in the premises mortgaged.

3. A mortgage may be assigned by mere delivery, without writing. (*Runyan v. Mersereau*, 11 Johns. 534.) See, also, notes to form No. 238.

No. 240.

Assignment of bond and mortgage, with covenants of amount due and of payment or collection.

This instrument, made this — day of —, 1—, between A. B., of etc., of the first part, and C. D., of, etc., of the second part, witnesseth: That the party of the first part, for a good and valuable consideration (or, for and in consideration of the sum of — dollars), to him in hand paid by the said party of the second part, hath sold, assigned, transferred and conveyed, and doth hereby sell, assign, transfer and convey to the said party of the second part, a certain mortgage, bearing date the — day of —, 1—, made by E. F. (and M. F., his wife), of, etc., to said A. B., (or to I. J.), to secure the payment of the sum of — dollars, payable in — years from the date thereof, with interest thereupon, at the rate of — per centum per annum, payable semi-annually, which said mortgage was (assigned to said A. B. by said I. J., by instrument in writing dated —, 1—, and recorded in — county clerk's office, on the — day of —, 1—, in Book No. — of Mortgages, at page —, and was) recorded in the clerk's office of — county, in Liber — of Mortgages, at page —, on the — day of —, 1—, at — o'clock, — M., together with the bond accompanying said mortgage, and therein referred to, and all sums of money due and to grow due thereon. (And the said party of the first part hereby covenants that there is secured to be paid by and (due and) unpaid on said bond and mortgage the sum of — dollars, with interest thereupon from —, 1—, at the date of this assignment, and hereby, in consideration as

aforesaid, guarantees the payment (or, the collection) of said bond and mortgage, and all moneys due (and to fall due) thereupon).

And the said party of the first part hereby appoints and constitutes said party of the second part his true and lawful attorney, irrevocable, in the name of said party of the first part or otherwise, but at his own proper costs and charges, to have, use and take all lawful ways and means for the recovery of the said money and interest, and in case of payment, to discharge the same as fully as said party of the first part might or could do, if these presents were not made.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.¹

In presence of

L. M.

A. B. [L. S.]

(Acknowledgment or proof as in forms Nos. 6, etc.)

1. A guaranty indorsed upon a bond, "of the collection of within amount as it becomes due," is not equivalent to a guaranty of payment. Mere non-payment is not sufficient to give the guarantee a right of action against the guarantor. He is bound to take proper measures to collect the debt within a reasonable time. (*Craig v. Parkis*, 40 N. Y. 181.)

The absolute guarantor of payment of a debt is liable, collaterally, upon notice being given him of the failure of the principal to pay. (*Bank of N. Y. v. Livingston*, 2 Johns. Cas. 409.)

A guaranty of punctual payment of interest on a bond expressed to be payable after a term of years, with interest meanwhile, is a guaranty only of the interest accruing before the principal became due. (*Hamilton v. Van Rensselaer*, 43 N. Y. 244; *Melick v. Knox*, 44 id. 677.)

Defendants assigned a bond and mortgage to N.; the assignment con-

tained a guaranty of the payment of the mortgage to N. *Held*, that this guaranty was not personal, and could be assigned with the bond and mortgage. (*Stillman v. Northrup*, 109 N. Y. 473.)

Also *held*, that the guaranty was not inoperative, because, by its terms, it was for payment of the mortgage, not the bond; that the intent was to guarantee the debt secured by the mortgage. (*Id.*)

N. executed an assignment of the bond and mortgage, which did not expressly assign the guaranty; he subsequently executed another, including the guaranty. *Held*, that this was sufficient to vest the guaranty in the assignee. (*Id.*)

It seems, an assignment of a bond and mortgage carries with it a guaranty of payment or collection, although not mentioned in the assignment. (*Id.*)

See, also, notes to forms Nos. 238 and 239.

No. 241.

Assignment of a bond and mortgage as collateral security for a debt.

This indenture, made the — day of —, in the year 1—, between C. P. of the (town) of —, in the county of —, of the one part, and C. D. of (the same place), of the other part, witnesseth: That the said C. P., for and in consideration of the sum of — dollars, to him in hand paid by the said C. D., hath granted, bargained, sold, assigned and set over unto the said C. D., a certain indenture of mortgage, executed by A. B. (and M., his wife), of the (town) of —, in the county of —, to the said C. P., bearing date the — day of —, in the year 1—, on certain lands in the (town) aforesaid, together with the bond therein referred to, and which said mortgage is recorded in Book of Mortgages No. —, on pages —, in the office of the (clerk) of the county of —, to have and to hold the said bond and mortgage, and the debt thereby secured (and all the title and interest conveyed by the said mortgage in the lands and premises therein described), to the said C. D., his heirs, executors, administrators and assigns, forever.¹

But this indenture is, nevertheless, made upon this express condition, that if the said C. P., his heirs, executors or administrators, shall well and truly pay, or cause to be paid, unto the said C. D., his heirs, executors, administrators or assigns [the sum of — dollars, on or before the — day of —, in the year 1—, with interest from the date of this indenture], this indenture shall be void and of no effect; this indenture being made for the purpose of securing the payment of [the said sum of — dollars, with interest as aforesaid], and for no other purpose whatever. And in case the said C. D., his heirs, executors, administrators or assigns, shall collect and receive the money due on the said mortgage hereby assigned, he shall after retaining the said [sum of — dollars, with the interest thereon], and his reasonable costs and charges in that behalf expended, pay the surplus, if any, to the said C. P., his executors, administrators or assigns.

In witness whereof, the said parties have hereto respectively set their hands and seals, the day and year first above written.²

C. P. [L. S.]

C. D. [L. S.]

Sealed and delivered in presence of

E. F.

(Acknowledgment or proof as in forms Nos. 6, etc.,

1. See note 2 to form No. 239.

2. See notes to forms No. 238, 239, 240.

Where the mortgage of a third person has been assigned by the mortgagee as collateral for his own debt, the foreclosure of the mortgage and purchase at the foreclosure sale by the assignee of the mortgaged premises, as against the assignor, where the latter is not made a party to the foreclosure and his equitable right foreclosed, simply substitutes the land for the mortgage, and the assignee holds it as a security merely, subject

to the right of the assignor to redeem by payment of the debt, and upon such payment he is entitled to the land. (Matter of Gilbert, 104 N. Y. 200, distinguishing Bloomer v. Sturges, 88 id. 168, as a case in which the assignee was made a defendant, and his equity as well as that of the mortgagor extinguished by the sale.)

See, also, Hoyt v. Martense (16 N. Y. 231); Dalton v. Smith (86 id. 176), and the cases there cited further as to the rights of the parties to an assignment of a mortgage as collateral security for the payment of a debt.

No. 242.

Assignment of a demand, as collateral security for an indorsement.

Whereas, A. B., of, etc., heretofore became at my request and for my accommodation and benefit, the indorser upon a certain promissory note, etc., dated — 1 —, made by me for the sum of — dollars (and interest thereupon), payable (one month) from date (or, on demand), to the order of said A. B.:

Now, therefore, I do hereby assign and transfer to said A. B., a certain (describing demand assigned), this assignment being made in order to secure the said A. B. against any and all loss or damage which may be incurred or sustained by him, by reason of his said indorsement of said note, etc., and the payment of which said promissory note, etc., will render this assignment void, otherwise the same is to remain in full force and virtue.

Witness my hand (and seal) this — day of, —, 1 —.

G. H.

(Acknowledgment or proof as in forms Nos. 6, etc.)

No. 243.

Assignment of a demand, as collateral security for a promissory note, etc.

Whereas, I, A. B., have executed, for value received, a certain promissory note, dated this day, payable (— days) after date (or, on demand), at, etc., for — dollars (with interest), to the order of C. D. (or, otherwise describing the obligation):

Now, therefore, in order to secure the payment of said (note), when the same shall become due and payable, I do hereby transfer and assign to said C. D., a certain (describe demand), as collateral security for such payment upon the condition that a payment of said note, according to the terms thereof, shall render this assignment void, otherwise the same is to remain in full force and virtue.

A. B.

In presence of

G. H.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

No. 244.

Assignment of a judgment.

This indenture, made this — day of —, in the year 1—, between A. B. of —, of the one part, and C. D. of —, of the other part. Whereas, the said A. B. did on the — day of —, 1—, recover a judgment in the [Supreme Court of the State of —], against E. F. of — for — dollars and — cents, damages and costs (as by the record thereof, now remaining in the county clerk's office of the county of —, may appear):¹

Now, this indenture witnesseth, that for and in consideration of the sum of — dollars of lawful money of the United States, to him, the said A. B., in hand well and truly paid by the said C. D., at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, he, the said A. B., hath granted, bargained, sold, assigned, trans-

ferred and set over unto the said C. D., his executors, administrators and assigns, the said judgment so recovered as aforesaid, against the said E. F., and all the benefit and advantage, sum and sums of money that may be had, obtained or gotten by reason or means of the said judgment, or any proceedings to be had thereupon.

And the said party of the first part doth hereby constitute and appoint the said party of the second part, and his assigns, his true and lawful attorney and attorneys, irrevocable,² with power of substitution and revocation, for the use and at the proper costs and charges of the said party of the second part, to ask, demand and receive and to sue out executions and take all lawful ways for the recovery of the money due or to become due on the said judgment; and on payment to acknowledge satisfaction, or discharge the same; and attorneys one or more under him or them, for the purpose aforesaid, to make and substitute, and at pleasure to revoke; hereby ratifying and confirming all that his or their said attorney or attorneys or substitute shall lawfully do in the premises.

And the said party of the first part doth hereby covenant that there is now due upon the said judgment the sum of — dollars, and that he will not collect or receive the same or any part thereof, nor release or discharge the said judgment, but will own and allow all lawful proceedings thereon, the said party of the second part saving the said party of the first part harmless of and from any costs and charges in the premises.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

A. B. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment or proof as in forms Nos. 6, etc.)

1. These words in brackets may be inserted or not according to circumstances.

revocable" in a power of attorney, see *Napier v. McLeod* (9 Wend. 120); *Raymond v. Squire* (11 Johns. 47);

2. As to the force of the word "ir- *Hilton v. Vanderbilt* (82 N. Y. 595).

No. 245.

Assignment of judgment, short form.

(Title of cause.)

Judgment for \$—— damages and \$—— costs, docketed in —— county, ——, 1——, in favor of the plaintiff (or, defendant). (*)

In consideration of —— dollars to me paid, I, J. D., do hereby assign and transfer to J. P. the judgment above mentioned, for his use and benefit; hereby authorizing him to collect and enforce payment thereof in my name or otherwise [and covenanting that the sum of —— dollars with the interest thereon from the —— day of —— in the year 1—— is due thereon.] But this assignment is made and taken in all (other)¹ respects at the risk of the said J. P., who is to collect the same at his own expense, and not to subject the said J. D. to the payment of any costs or expenses whatever.

In witness whereof, I have hereunto set my hand this —— day of ——, in the year 1——

In presence of

R. D.

J. D.

(Acknowledgment or proof as in forms Nos. 6, etc.)

[Or, as above to (*) and from thence as follows :

For value received, I do hereby assign and set over the above-mentioned judgment to J. D., for his use and at his risk, costs and charges in all respects.

Dated ——, 1——.

In witness, etc. (as above).

In presence of

F. C.

J. D.

(Acknowledgment or proof as above).]

1. Omit this word in parenthesis if no covenant as to the amount due is contained in the assignment.

No. 246.**Assignment of a judgment, another form.**

SUPREME COURT.

J. D.

v.

R. R.

}

Judgment docketed, against the defendant, the — day of — 1 —, for — dollars, damages and costs, in — county clerk's office.

For value received, I do hereby assign and set over the above-mentioned judgment to J. I., for his use, and at his risk, costs and charges in all respects.

Dated — 1 —.

J. D.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

No. 247.**Assignment of dower.**

This indenture, made the — day of —, in the year 1—, between R. L. (son and heir) of O. L., late of —, of the one part, and N. H. (the wife of J. H.), and who is the widow (or, was the widow), and relict of the said O. L., of the other part. Whereas, the said O. L. was in his life-time, and at the time of his death, seized, in fee-simple absolute,¹ of and in divers lands and tenements, situated in the (town) of —, in the county aforesaid, which, upon the decease of the said O. L., descended to the said R. L., as the heir of said O. L. (or, were devised to said R. L. by the will of said O. L.):

Now, this indenture witnesseth: That the said R. L. hath endowed and assigned, and by these presents doth endow and assign, unto the said N. H., the third part of said lands and tenements, to-wit: All that certain (describing premises conveyed), to have and to hold unto the said N. H. for and during the natural life of the said N. H.,² in severalty, by metes and bounds, in the name of dower, and in recompense

and satisfaction of all the dower which the said N. H. ought to have, of or in the said lands and tenements, which were of the said O. L., in — aforesaid (or, elsewhere).

In witness whereof, etc. (as in form No. 30).

In presence of R. L. [L. S.]

G. H.

(Acknowledgment or proof as in forms Nos. 6, etc.)

1. A widow shall be endowed of § 1; 7th ed. 2197.) As to dower the third part of all the lands, whereof generally, see id. 740-744, §§ 2-25. her husband was seized of an estate 2. A widow may bequeath the crop of inheritance at any time during in the ground of the land holden by the marriage (1 N. Y. R. S. 740, her in dower. (Id., § 25, p. 743.)

No. 248.

Assignment by lessee of a lease under seal.

This indenture, made the — day of — in the year 1—, between C. D. of — (merchant), of the first part, and E. F. of (said city) (merchant), of the second part: Whereas, in and by a certain indenture of lease, bearing date the — day of — in the year 1—, made between A. B. of —, of the one part, and the said C. D. of the other part; he, the said A. B., for the considerations therein mentioned, did grant, lease, etc., all that certain lot, etc. (describe premises covered by lease), to hold unto the said C. D., his executors, administrators and assigns, from the — day of — in the year 1—, for and during the whole term of — years, from — next ensuing, and fully to be complete and ended, at and under the yearly rent of — dollars, payable, etc., as in and by the said indenture of lease, on reference thereto, will more fully appear.

Now, this indenture witnesseth: That the said C. D., for and in consideration of the sum of — dollars, lawful money of the United States, to him in hand paid by the said E. F., at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, transferred and set over, and by these presents doth grant, bargain, sell, assign, transfer and set over, unto the said E. F., his executors, administrators and assigns, all the said premises above mentioned,

and every part and parcel thereof, with the appurtenances; and also all the estate, right, title, interest, term of years yet to come and unexpired, property, claim and demand whatsoever, of the said C. D., of, in and to the same, and every part and parcel thereof, together with the said indenture of lease itself: To have and to hold the said premises above mentioned, and hereby granted and assigned, and every part and parcel thereof, with the appurtenances, unto the said E. F., his executors, administrators and assigns, for and during all the rest, residue and remainder, yet to come and unexpired, of the said term of years, in and by the said indenture of lease granted, in as full, large, and ample a manner, to all intents and purposes, as the said C. D. now holds, or may at any time hold and enjoy the same, by virtue of the said indenture of lease. Subject, nevertheless, to the several rents, covenants, conditions and agreements in the said indenture of lease reserved and contained.

In witness whereof, etc. (as in form No. 240).¹

In presence of

C. D. [L. S.]

G. H.

(Acknowledgment or proof as in forms Nos. 6, etc.)

1. Where a lessee assigns his whole estate, without reserving any reversion therein in himself, a privity of estate is at once created between his assignee and the original lessor, and the latter has a right of action directly against the assignee, on the covenant to pay rent, or any other covenant in the lease which runs with the land; but if the lessee sub-

lets the premises reserving any such reversion, however small, the privity of the estate is not established and the original landlord has no right of action against the sub-lessee, there being neither privity of contract nor of estate between them. (*Stewart v. Long Island R. R. Co.*, 102 N. Y. 601, 607.)

No. 249.

Assignment of a lease by indorsement.

Know all men by these presents, that I, A. B., in consideration of —, to me in hand paid by C. D., the receipt whereof I do hereby acknowledge, have bargained, sold, assigned and set over, and by these presents do bargain, sell, assign and set over, unto the said C. D., his executors, administrators and assigns [or, if a durable lease, say, his heirs

and assigns], as well the within written indenture, as also all the term and interest in all and singular the lands, tenements, hereditaments, and premises within mentioned, yet remaining under and by virtue of the said indenture, and likewise all my estate, right, title, interest, claim, property and demand, of, in or to the same lands, tenements, hereditaments and premises, which I now have, either by means of the within indenture, or otherwise howsoever; subject, nevertheless, to the rents and covenants in the said indenture contained.

In witness whereof, etc. (as in form No. 30).¹

In presence of A. B. [L. S.]

G. H.

1. See note 1 to form No. 243.

No. 250.

Assignment of a lease by an executor of the lessee.

This indenture, made this — day of —, in the year 1—, between E. F., of, etc., executor of the last will and testament of G. H., late of —, deceased, of the one part, and J. K., of —, of the other part:

Whereas, in and by an indenture of lease, bearing date on the — day of —, 1—, and made or mentioned to be made between F. T., of —, of the one part, and the said G. H., by the name of G. H., of — (as in the lease), of the other part, he, the said F. T., for the consideration therein mentioned, did grant, lease, set and to farm let (write these words as you find them written in the lease), all that certain, etc., situate, etc. (describe premises as in lease.) To hold unto the said G. H., his executors, administrators and assigns, from — for and during the whole of the term of — years from thence next ensuing, and fully to be complete and ended, at and under the yearly rent of —, payable (as you may find it in the lease), as in and by the said in part recited indenture of lease, relation being thereunto had, may more fully appear:

Now this indenture witnesseth: That the said E. F., for and in consideration of the sum of — of lawful money of the United States, to him in hand paid by the said J. K., at or before the sealing and delivery of these presents, the receipt

whereof is hereby acknowledged, hath granted, bargained, sold, assigned, transferred and set over, and by these presents doth grant, bargain, sell, assign, transfer and set over unto the said J. K., his executors, administrators and assigns, all the said premises above mentioned, to be demised and leased to the said G. H., in and by the said in part recited indenture of lease, as aforesaid, and every part and parcel thereof, with the appurtenances; and also, all the estate, right, title, interest, term of years yet to come and unexpired, property, claim and demand whatsoever, of him, the said E. F., as executor as aforesaid, of, in and to the same, or of, in or to any part or parcel thereof, together with the said in part recited indenture of lease itself. To have and to hold the said premises above mentioned, and hereby granted and assigned, and every part and parcel thereof, with the appurtenances, unto the said J. K., his executors, administrators and assigns, for and during all the rest, residue and remainder yet to come and unexpired, of the said term of — years, in and by the said in part recited indenture of lease granted, in as full, large and ample a manner, to all intents and purposes, as he, the said E. F., his executors, administrators or assigns, might, should or ought to have held and enjoyed the same, by virtue of the said in part recited indenture of lease, or his being executor as aforesaid, or by any other ways or means whatsoever. And the said E. F., for himself, his heirs, executors and administrators, doth covenant, promise, grant and agree, to and with the said J. K., his heirs and assigns, and every of them, by these presents, that he, the said E. F., now hath, in himself, good right, full power and lawful authority to grant and assign the said premises, and every part and parcel thereof, with the appurtenances, unto the said J. K., his executors, administrators and assigns, in manner aforesaid; and also, that he, the said J. K., his executors, administrators and assigns, paying the rent and performing the covenants, promises, conditions and agreements, in and by the said in part recited indenture of lease reserved, mentioned and contained, shall and may, from time to time, and at all times hereafter, for and during all the rest, residue and remainder yet to come and unexpired, of the said term

of — hereinbefore granted and assigned, as aforesaid, peaceable and quietly have, hold, occupy, possess and enjoy the said premises hereby granted and assigned, and every part and parcel thereof, with the appurtenances, without the let, suit, trouble, molestation, interruption, eviction or disturbance of him, the said E. F., his executors, administrators and assigns, or any other person or persons, lawfully claiming or to claim the said premises, or any part thereof, by, from or under him, them or any of them, or by his or their means or procurement: [And further, that he, the said E. F., his executors, administrators and assigns (and all and every other person or persons having or lawfully claiming any estate, right, title or interest, in the said hereby granted and assigned premises, or any part thereof),¹ shall and will, from time to time, and at all times hereafter, upon the request, and at the proper costs and charges in the law of the said J. K., his executors, administrators or assigns, make, do and execute, or cause to be made, done and executed, all and every such further and other lawful and reasonable act and acts, thing and things, assurance and assurances, in the law whatsoever, for the further, better and more perfect granting, assigning and assuring of the said premises above mentioned, with the appurtenances, unto the said J. K., his executors, administrators and assigns, for and during all the rest, residue and remainder yet to come and unexpired, of the said term of —, hereby granted and assigned as aforesaid, as by the said J. K., his executors, administrators or assigns, or his or their counsel, learned in the law, shall be reasonably advised, devised and required.]²

In witness, etc. (as in form No. 30).

E. F., Executor, etc., [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment or proof as in forms Nos. 6, etc.)

1. These words in parenthesis the executor had better omit, as the covenant would bind him personally, and not the estate he represents, unless he is specially authorized by the testator to make it.

2. This covenant of further assurance may be omitted when considered to be unnecessary for the protection of the rights of the parties.

No. 251.

Assignment of a patent right, or of an interest therein.

Whereas, letters-patent, bearing date the — day of —, in the year 1—, were granted and issued by the government of the United States, under the seal thereof, to A. B. of the town of —, in the county of —, in the State of —, for (here state the nature of the invention, in general terms, as in the patent), a more particular and full description whereof is annexed to the said letters-patent in a schedule, by which letters-patent the full and exclusive right and liberty of making and using the said invention, and of vending the same to others to be used, was granted to the said A. B., his heirs, executors, administrators or assigns, for the term of seventeen years from the said date (*):

Now, know all men by these presents, that I, the said A. B., for, and in consideration of the sum of — dollars, to me in hand paid, the receipt whereof is hereby acknowledged, have granted, assigned and set over, and by these presents do grant, assign and set over unto C. D., of the town of —, in the county of —, and State of —, his executors, administrators and assigns, forever, the (one — interest in) said letters-patent, and all my right, title and interest in and to the said invention so granted unto me. To have and to hold the said letters-patent and invention, with all benefits, profits and advantage thereof, unto the said C. D., his executors, administrators and assigns, in as full, ample and beneficial a manner, to all intents and purposes, as I, the said A. B., by virtue of the said letters-patent, may, or might have, or hold the same, if this assignment had not been made, for and during the rest and residue of the said term of seventeen¹ years.

In witness whereof, etc. (as in form No. 30).²

A. B. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment or proof, as in forms Nos. 6, etc.)

1. See § 4884, U. S. R. S., as to term of patent.

2. Every patent or any interest therein shall be assignable in law, by

an instrument in writing, and the under his patent to the whole or any
 patentee or his assigns or legal rep- specified part of the United States.
 resentatives may, in like manner, (U. S. R. S., § 4898.)
 grant and convey an exclusive right

No. 252.

Assignment of book account.

In consideration of the sum of — dollars, to me in hand paid by C. D., of, etc., the receipt whereof is hereby acknowledged, I, A. B., of, etc., do hereby transfer, assign and set over unto said C. D. (all and singular), the following described book account (or, accounts), to-wit (describing same), (or, the book account (or accounts), of which a copy (or copies), are hereto annexed), with all moneys due or to grow due thereupon, hereby authorizing the said C. D. to collect and receive the same, and to give receipt (or, receipts), and acquittances therefor, and to sue for and collect the same in my name or otherwise, but at his own proper costs and charges (and I hereby guarantee the payment of the accounts aforesaid when the same become due).

In witness. etc. (as in form No. 30).

A. B. [L. S.]

In presence of

E. F.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

No. 253.

Assignment of a man's whole estate in consideration of certain specified debts.

This indenture, made the — day of —, in the year 1—, between A. B., of, etc., of the first part, and C. D., E. F. and G. H., of the second part, witnesseth:

Whereas, the said party of the first part is justly indebted to the said parties of the second part, as follows, that is to say, to the said C. D. in the sum of — dollars (specifying each debt with the consideration and the evidence, if any, whether bond, note, etc.).

In consideration of the premises, and for and toward the payment of the said debts, the said party of the first part has granted, assigned, bargained and sold, and by these presents doth grant, assign, bargain and sell to the said parties of the second part, all the real estate and chattels real, and all the goods, chattels, moneys and debts owing to him; and all the personal property of him, the said party of the first part, wheresoever the said real estate, chattels real or personal property may be: To have and to hold the same to the said parties of the second part, their heirs, executors, administrators and assigns forever.

In witness whereof, etc. (as in form No. 30).

A. B. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment or proof, as in forms Nos. 6, etc.)

No. 254.

Assignment of indentures of apprenticeship.

See APPRENTICESHIP, forms Nos. 211, 213.

No. 255.

Assignment by old sheriff to the new sheriff.

(N. Y. Code Civ. Proc., § 184.)

Know all men by these presents, that I, A. B., late sheriff of the county of —, in pursuance of the statute in such case made and provided, have transferred, assigned and delivered, and do hereby transfer, assign and deliver to C. D., now sheriff of said county, who has this day served upon me the certificate of the county clerk of the county of —, that he has duly qualified as such sheriff, by taking the constitutional oath of office, and filing the same in said clerk's office, and has given security by bond, filed in said clerk's office, as required by law, duly approved by said clerk, for the due performance of his duties as such sheriff:

The county jail (or, jails) of said county of —, with all their appurtenances, and the property of the county therein.

A summons and complaint and copies thereof, in the — court, at the suit of E. F. against G. H., dated —, M. N., attorney.

A summons, affidavits and order of Hon. D. C. H., a justice of the Supreme Court, and copies thereof, to arrest and hold the defendant to bail in the sum of — dollars, wherein L. E. is plaintiff, and J. K., defendant. M. C., attorney.

An execution upon a judgment in the — Court, in which C. R. is plaintiff, and L. F. is defendant, for — dollars, rendered —, 1—, received at — o'clock — M. C. F., Attorney.

An execution against the body of O. P., at the suit of P. W., for — dollars, docketed —, 1—, and received —, 1—, E. R., attorney, upon which said defendant has been arrested and is now upon the liberties of the jail of said county.

Also, the bond of said O. P., with L. M. as his surety, for the liberties of said jail, in the penalty of — dollars, which is dated —, 1—.

Also, the body of F. G. confined in said jail for (grand larceny), upon the warrant of commitment of A. P. H., recorder of the city of —, and also the said warrant.

Also, the jail records of said jail, now at said jail, one stove, — blankets, — tons of coal, etc.

In witness whereof, I have hereunto set my seal and name of office, this — day of —, 1—.

A. B.

(late Sheriff of — county). [L. S.]

Sealed and delivered in presence of

E. F.

(Acknowledgment, etc., as in form No. 101, inserting word "late" before word "sheriff," where it occurs in that form.)

No. 256.

Assignment of entire or part interest in invention.

I, A. B., of, etc., do hereby assign and transfer to C. D., of, etc., in consideration of the sum of — dollars, to me in hand paid by said C. D., the receipt whereof is hereby ac-

knowledge (the — interest in), a certain invention made by me of improvements in (naming articles), for which I am about to make application for letters patent of the United States, and which are fully set forth in the specification which has been prepared and executed by me, for the purpose of obtaining letters patent therefor.

(And I hereby authorize and request the commissioner of patents of the United States to issue said letters patent to said C. D., as assignee of my whole right, title and interest thereto, for the sole use and benefit of said C. D. and his representatives.)¹

In witness, etc. (as in form No. 30).

A. B. [L. S.]

Sealed and delivered in presence of

A. M.

1. Insert this clause in case of assignment of entire interest of assignor.

No. 257.

Assignment of entire right in invention, with certificate of record in United States Patent Office.

Whereas, I, J. McC., of the city and State of New York, have invented certain improvements (in means, for sewing button holes, etc.), for which I am about to make application for letters patent of the United States; and whereas, S. B. B. and L. S. B. of New York city, aforesaid, have agreed to purchase from me all the right, title and interest which I have, or may have in and to said invention, in consequence of the grant of letters patent therefor :

Now this indenture witnesseth, that for and in consideration of the sum of one dollar in hand paid, the receipt whereof is hereby acknowledged, I have sold and assigned, and do hereby transfer and convey, to the said S. B. B. and L. S. B., the full and exclusive right and title to all the improvements made by me as fully set forth and shown in the specification which I have prepared and executed under date of October 17, 1864, preparatory to the obtaining letters patent therefor; and I do hereby authorize and request the commissioner of patents to issue the said letters patent to

the said S. B. B. and L. S. B. as the assignees of my whole right and title thereto, for the sole use and behoof of the said S. B. B. and L. S. B. and their legal representatives.

In testimony whereof, I have hereunto set my hand and affixed my seal, this — day of —, in the year one thousand — hundred and —.

J. McC. [L. S.]

Sealed and delivered in presence of

[L. S.]

C. H. S.

United States Patent Office.—Received and recorded —, 1—, in Liber No. —, of Transfers of Patents.

In testimony whereof I have caused the seal of the Patent Office to be hereunto affixed.

J. L. H.,

Act'g Comm. of Patents.

No. 258.

Assignment of part interest in invention, with certificate of record in United States Patent Office.

Whereas, I, J. McC., of the city, county and State of New York, have invented certain new and useful improvements in (sewing machines, for stitching button holes) and other purposes, for which I am about to make application for letters patent of the United States, and the execution of said application being on the same date herewith; and whereas, D. C. F., of Brooklyn, in the county of Kings and State of New York, has agreed to purchase from me one-third ($\frac{1}{3}$) of all the right, title and interest which I have, or may have, in and to the said invention, in consequence of the grant of letters patent therefor, and has paid to me, the said J. McC., the sum of one dollar, the receipt of which is hereby acknowledged:

Now, this indenture witnesseth, that for and in consideration of the sum to me paid, I have assigned and transferred, and do hereby assign and transfer to the said D. C. F. one-third ($\frac{1}{3}$) of all my right, title and interest in said invention, as fully set forth and described in the specification which I have prepared and executed preparatory to the obtaining of

letters patent therefor. The same to be held and enjoyed by the said D. C. F., for her own use and behoof, and for the use and behoof of her legal representatives, to the full end of the term for which said letters patent may be granted, as fully and entirely as the same would have been held and enjoyed by me if this assignment and sale had not been made.

In testimony whereof, I hereunto set my hand and affix my seal this — day of —, 1—.

J. McC. [L. S.]

Sealed and delivered in the presence of

H. T. B.

Received for record —, —, 1— and recorded in Liber No. —, page —, of Transfers of Patents.

In testimony whereof, I have caused the seal of the Patent Office to be hereunto affixed.

[L. S.]

E. S.,

Acting Commissioner.

CHAPTER VIII.

Assignments for Creditors.

- No. 259. Assignment by an individual for the payment of his debts, giving a preference, etc.
- 260. Same, by members of copartnership, with preferences.
- 261. Schedule to be annexed to assignment for creditors, when referred to as annexed.
- 262. Inventory or schedule required by laws of New York to be made and filed by a debtor making a general assignment for creditors.

No. 259.

Assignment by an individual for the payment of his debts, giving a preference, etc.

(Laws of N. Y., 1877, ch. 466, § 2, as amended by chap. 294 of Laws of 1888.)

This indenture, made the — day of —, in the year 1—, between A. B., of the (city) of —, in the county of —, and State of (New York), carrying on and conducting at this date the business of a dealer in (hardware) at (No. —, — street) in said (city), party of the first part, and C. D., of the (said city), party of the second part, witnesseth :

Whereas, the said A. B. is indebted to sundry persons, and being in embarrassed circumstances, is desirous of making a just and fair distribution of his property amongst his creditors: Therefore in consideration of the premises, and of one dollar to him paid by the said C. D., the receipt whereof is hereby acknowledged, the said A. B. has granted, bargained and sold, released, assigned and set over, and by these presents doth grant, bargain and sell, release, assign and set over unto the said C. D., and to his heirs and assigns forever,¹ all and singular, the lands, tenements and hereditaments, real estate and chattels real of the said A. B., wherever the same may be situated; and also all the goods, wares and merchan-

dise, bonds, notes, accounts and debts due and owing to the said A. B., in what manner soever secured, and all books and vouchers relating thereto, and all the personal property of the said A. B., of every kind and description, wherever the same may be (excepting such articles as are by law exempt from execution), to have and to hold the same, and every part and parcel thereof, to the said C. D., and to his assigns, in trust, however, and to and for the uses, intents and purposes following, that is to say :

The said C. D. shall take possession of the said property, and shall with all convenient diligence (and within (six months) from the date hereof),² sell and dispose of the same, either at public or private sale, and to such persons, and for such prices as he shall deem best for the interest of the parties concerned, and convert the same into money, and shall also collect all such debts as are collectible.

And the said C. D. shall, by and with the avails and proceeds of sales and collections, first pay and discharge all the just and reasonable costs and expenses attending the due execution of this assignment, and the carrying into effect the said trust (together with a reasonable compensation for his own services);³ and the residue of the avails and proceeds of the said sales and collections shall constitute a fund, to be used and applied by the said C. D. for and toward the payment of the debts owing by the said A. B., and which debts the said C. D. shall pay and discharge in the order and manner following, that is to say :

First. The wages and salaries actually owing to the employes of said party of the first part, at the time of the execution of this assignment, amounting to (about) the sum of — dollars, and should the assets of the said party of the first part not be sufficient to pay in full said wages or salaries, they shall be applied to the payment of the same *pro rata* to the amount of each such claim.⁴

Second. The following debts owing by the said A. B., and which are hereby designated as class second, viz.:

To E. F. & Co. of (the city of New York), the amount of a promissory note of said A. B., held by them, dated, etc., for — dollars (and interest thereupon from —, 1—),

also the amount of a promissory note held by the bank of —, dated, etc., made by the said A. B., and indorsed by G. H., for the sum of — dollars (and interest thereupon from —, 1—); also, etc. (describing each debt intended to be put in this class).

If there is not sufficient of the said fund for the payment of all the debts set forth in the said class second, then the said C. D. shall distribute the same amongst the creditors of the said A. B. therein named, *pro rata*, or in proportion to their said respective demands.

Third. After the payment of all the debts set forth in class second, the rest and residue of the said fund, if any there be, shall be used and applied by the said C. D. for and toward the payment of the following debts owing by the said A. B., and which are hereby designated as class third, and which the said C. D. shall pay and discharge, or as far as the said fund will go for that purpose, in the following order and manner, viz.:

No. 1. A debt owing by the said A. B. to, etc. (state amount, etc., as in class second).

No. 2. (The like.)

No. 3. (The like.)

(State in like manner each debt intended to be put in this class.)

It is intended that the said debts hereby set forth in class third shall be paid in full, if there is sufficient of the said fund for that purpose; but if there shall not be sufficient for the payment of the whole, then the said C. D. shall use and apply the said fund, or as far as the same shall extend, to the payment and discharge of such debts, in the order in which they are above placed and numbered; and no part of the said fund shall be applied to the payment of any part of either of such debts except the first, until that which immediately precedes it in the above order and arrangement shall have been paid in full.

[The provisions above made and designated as "second" and "third," relating to preferences under this assignment, are also hereby expressly declared to be intended to be subject to the provisions of chapter 503 of the Laws of New

York of 1887, entitled "An act, etc. (giving title of that chapter), passed June 2, 1887, to-wit: That such preferences shall not be effectual, except to the amount of one-third in value of the estate hereby assigned, left after deducting the wages and salaries, the payment of which is above provided for, and the costs and expenses of executing this trust and that should said one-third of the assets of said A. B. be insufficient to pay, in full, the said preferred claims, then the said assets shall be applied to the payment of the same *pro rata* to the amount of each such preferred claim, in the order and manner above provided, and the provisions above made in regard to the preference of claims are to be carried out only to the extent to which the same can be legally carried out under such statutory provisions.]"⁶

Fourth. After the payment of all the debts embraced in class third, as aforesaid, the rest and residue of the said fund, if any there shall be, shall be used and applied by the said C. D. for and toward the payment of all the other debts owing by the said A. B. And after the payment of all the costs, charges and expenses attending the execution of the said trust, and the payment and discharge in full of all the lawful debts owing by the said A. B., of any and every kind and description, if any part of the said fund shall remain in the hands or control of the said C. D., he shall return the same to the said A. B., his executors, administrators or assigns.⁶

[The schedule hereunto annexed, marked A, is intended to contain a just and true statement of all the real estate, chattels real, and personal property belonging to the said A. B., and of all the debts owing to him, whether due or not due at the date of this instrument.]"⁷

[If any dispute or misunderstanding shall at any time arise or exist respecting the title to any of the property hereby conveyed or transferred to the said C. D., or respecting the debts owing by the said A. B., the said C. D. is authorized, in his discretion, to submit the same to, and have the same determined by arbitrators or referees; and he is also authorized to compound and liquidate any of the said debts owing to the said A. B., which he may deem bad or doubtful for

such proportion thereof, and upon such terms as he may deem proper and most for the interest of the said creditors of the said A. B.]⁸

And the said party of the second part doth hereby assent to and accept the said assignment and the trusts hereby created and reposed in him.

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written.⁹

A. B. [L. s.]

C. D. [L. s.]

Sealed and delivered in presence of

E. F.

(Acknowledgment as in forms Nos. 89, etc.)¹⁰

I, J. W., the assignee mentioned in the foregoing assignment, do hereby assent to and accept the said assignment, and the trusts created and reposed in me thereby.

In witness whereof, I have hereunto set my hand and seal, this — day of —, 1—. ¹¹

C. D. [L. s.]

Sealed and delivered in presence of

G. H.

(Acknowledgment as above.)

1. The words "his heirs, executors, administrators and assigns," following the name of the assignee in this clause of the assignment, have been held to be used to describe the quality of the estate conveyed and not the class of persons taking it, and consequently not to render the assignment fraudulent or void. (*Flagler v. Schoeffel*, 40 Hun, 178; *Hess v. Blakeslee*, 2 N. Y. State Rep. 309.)

2. It was held by the New York Supreme Court at Special Term that a clause in an assignment of all the assignor's property for the payment of his debts, which required the assignees forthwith to take possession of the premises "and within convenient time as to them shall seem meet" to

convert the property into money, etc., in effect authorized the assignees "to discharge their duties whenever it should suit their pleasure and convenience," and, therefore, rendered the assignment void. That the creditors were entitled to have the assets converted into money, and their debts paid without any unnecessary delay. (*Woodburn v. Mosher*, 9 Barb. 255.) And this ruling was sustained by *Murphy v. Bell* (8 How. Pr. 468).

But in the case of *Benedict v. Huntington* (32 N. Y. 219), it was said that the construction given to the assignments in those cases had been overruled by the later cases, and that these cases were not authority upon the questions of con-

struction arising from the terms of those assignments, and an assignment authorizing the assignee to forthwith take possession of all the assigned property and "within such convenient time as to him might seem meet, by public or private sale, for the best price that could be procured, to convert all and singular the said premises, property and estate into money, etc.," was valid. See further that case and the cases therein cited and referred to as to the principles governing the construction of assignments, and particularly as to the provisions from which a power to sell on credit may be implied; and see also *Rapalee v. Stewart* (27 N. Y. 310); *Jacob v. Remsen* (36 id. 668); *Coyne v. Weaver* (84 id. 386).

An assignment by insolvent debtors, of their property, to trustees for the benefit of their creditors, authorizing the trustees to sell the assigned property upon credit, is fraudulent and void as against the creditors of the assignors. (*Nicholson v. Leavitt*, 6 N. Y. 510). See also *Roberts & Co. v. Buckley* (145 N. Y. 215).

3. The law has fixed the compensation which the assignee shall receive under a general assignment for creditors. That is the extent to which it has been deemed proper or judicious to allow the assigned estate to be charged, and the assignor has no authority to charge it further for payment of compensation to the assignee to the prejudice of his creditors. *Held*, accordingly, that an agreement between the assignee and assignor, by which he was to receive a certain fixed sum, which was in excess of commissions to which he would be entitled, as compensation in case the assignor should compound with his creditors, or the assignment should be attacked by creditors and set aside, was void, and such compensation could not be allowed upon the assignee's account-

ing, the assignment having been set aside as fraudulent. (*Boegler v. Eppley*, 40 Hun, 523, following decision in *Matter of Hurlbut*, 89 N. Y. 259.)

If the assignee is entitled to any thing beyond his legal commission, he must, *it seems*, look to the assignor individually for the difference. (*Id.*)

See also *Keteltas v. Wilson* (36 Barb. 293; S. C., 23 How. Pr. 69); *Halstead v. Gordon* (34 Barb. 422); *Campbell v. Woodworth* (33 id. 425; *aff'd*, S. C., 24 N. Y. 304).

Section 26 of chapter 466 of Laws of New York of 1877, as amended by chapter 318 of Laws of 1878, provides that the assignee or assignees named in any assignment shall receive for his or their services a commission of five per centum on the whole sum which will have come into his or their hands. (Laws of N. Y. of 1878, p. 410; R. S., 7th ed., 2281.)

It was held in *Matter of Shaw* (18 Hun, 195), that under a general assignment made before the above amendment was passed, providing that the assignees were "to pay and discharge all the just and reasonable expenses, costs and charges of executing this assignment and of carrying into effect the trust hereby created, together with a reasonable commission or compensation to the assignees for their own services in executing the said trust;" that the assignees were only entitled to receive the same commissions as are by law allowed to executors and administrators.

Commissions of an assignee will not be allowed where creditors' suits have been commenced, to have the assignment adjudged fraudulent. (*Dexter v. Adler*, 1 N. Y. Supp. 684.)

See, also, *Matter of Bassford* (13 Daly, 22); *Matter of Rauth* (10 id. 52); *Matter of Wolf* (1 N. Y. State Rep. 273); *Hynes v. Campbell* (39 id. 874; S. C., 15 N. Y. Supp. 506).

4. It is provided by chapter 283 of the Laws of New York of 1886, amending section 29 of chapter 466 of Laws of 1877, as previously amended by chapter 328 of the Laws of 1884, that in all distributions of assets under all assignments, made in pursuance of the act, the wages or salaries actually owing to the employees of the assignor or assignors at the time of the execution of the assignment shall be preferred before any other debt; and should the assets of the assignor or assignors not be sufficient to pay in full all the claims preferred, pursuant to that section, they shall be applied to the payment of the same *pro rata* to the amount of each such claim. (Laws of N. Y. of 1886, p. 461.) See chs. 266 and 624 of Laws of 1897.

The instrument of assignment itself, made pursuant to the act, is not, however, rendered void by the omission to insert therein a clause giving such preference, but the instrument is to be read in connection with the statute, as if the said provision formed part of it; and so, the statutory preference is impressed upon the trust fund in the hands of the assignees. (Richardson v. Thurber, 104 N. Y. 606.)

A statute imposing such a preference upon a voluntary assignment is not unconstitutional. The legislature may permit it to be made only on the expressed conditions, and the assignor, by the act of making the assignment, accepts the conditions. (Id.)

See, also, Johnston v. Kelly (43 Hun, 379); Matter of Heath (46 id. 114); Smith v. Hartwell (1 N. Y. State Rep. 241; *aff'd*, S. C., 28 Week. Dig. 239; 55 N. Y. Super. Ct. 325), as to the construction of this provision of the statute.

5. A schedule containing the names

of preferred creditors, referred to in a general assignment for the benefit of creditors, was not, at the time the assignment was executed, annexed to the assignment, was not acknowledged by the assignor or assignee, and was not filed with the county clerk until three days after the filing of the assignment. *Held*, that the assignment did not comply with the statutes relating to general assignments, and was properly set aside. (Francy v. Smith, 47 Hun, 119.)

Under the Voluntary Assignment Act of the State of Illinois which declares that all preferences in any assignment thereafter made shall be void, when an insolvent debtor, realizing that he can no longer continue business, determines to yield the dominion of all his property, and executes, in pursuance of that purpose, in favor of certain of his creditors who understand his purpose, confessions of judgment, conveyances, bills of sale, etc., at short intervals, and as parts of one transaction, such instruments constitute an assignment, within the meaning of the statute, and the preferences are void. But the creditors thus attempted to be preferred are entitled to share *pro rata* with the other creditors. (White v. Cotzhouzen [U. S. Sup. Ct., Jan., 1889], 39 Alb. L. J. 270.) See Tompkins v. Hunter (149 N. Y. 117)

5. By chapter 503 of the Laws of New York of 1887, section 30 was added to chapter 466 of the Laws of 1877, providing as follows: "In all general assignments of the estates of debtors for the benefit of creditors hereafter made, any preference created therein (other than for the wages or salaries of employees under chapter three hundred and twenty-eight of the Laws of eighteen hundred and eighty-four, and chapter two hundred

and eighty-three of the Laws of eighteen hundred and eighty-six) shall not be valid except to the amount of one-third in value of the assigned estate left after deducting such wages and salaries, and the costs and expenses of executing such trust; and should said one-third of the assets of the assignor or assignors be insufficient to pay in full the preferred claims to which, under the provisions of this section, the same are applicable, then said assets shall be applied to the payment of the same *pro rata* to the amount of each said preferred claims." (Laws of N. Y. of 1887, p. 634.) See *Central Nat. Bank v. Seligman* (138 N. Y. 435).

The provision above referred to, that if one-third of an estate assigned for the benefit of creditors shall be insufficient to pay all of the preferred claims, such third shall be applied to their payment *pro rata*, refers only to claims preferred equally, and in the same class. It does not prevent giving a preference to certain claims preferred in a primary class, over certain other claims preferred in a secondary class. (N. Y. Com. Pleas, 1891, *Matter of Boyd*, 35 N. Y. State Rep. 37; S. C., 12 N. Y. Supp. 284.)

The effect of the above statute of 1887 was simply to limit the amount which should be applied to the payment of preferred claims, and an assignor still has the power to designate the manner in which that amount shall be applied. (*Matter of Sisson*, 59 Hun, 330, 335; S. C., 36 N. Y. State Rep. 290; 12 N. Y. Supp. 820; *Matter of Eaton*, 59 Hun, 84; *aff'd* without opinion, 126 N. Y. 655.)

The provision is not confined to preferences in the assignment itself, but applies to those created by a separate instrument in contemplation of the assignment; it includes all instrumentalities which the insolvent

debtor, in contemplation of a general assignment, voluntarily employs to give a preference, and, *it seems*, the want of knowledge on the part of a creditor so preferred, that an assignment was contemplated, will not avail to validate the preference. (*Berger v. Varrelman*, 127 N. Y. 281.) But see *Tompkins v. Hunter* (149 N. Y. 117).

But while *it seems* that if the creditor accepts the security with knowledge that the debtor intends to make an assignment, and that the security was executed in contemplation thereof, and that it will result in a violation of the provisions of the act of 1887, the security will be void; yet, *held*, that if the creditor accepts it in ignorance of any such existing intent on the part of the debtor, the provision does not apply, and the security is not rendered invalid by the fact that the debtor does thereafter execute an assignment. (*Manning v. Beck*, 129 N. Y. 1, distinguishing *Berger v. Varrelman*, *supra*.) See *Maas v. Falk* (146 N. Y. 34).

See, also, as to preferences, *White v. Cotzhausen* (39 Alb. L. J. 279; S. C., 129 U. S. 281), and other cases cited in note 4 to this form. Also *McNaney v. Hall* (86 Hun, 415); *Claflin Co. v. Arnheim* (87 id. 236); *Tompkins v. Hunter* (*supra*).

6. A provision in a general assignment for the benefit of creditors, that after the payment of the creditors specifically named and preferred, their said debts, demands and liabilities, the assignee shall return the surplus, if any, to the assignor, renders the assignment fraudulent and void as against the general creditors. (*Sutherland v. Bradner*, 39 Hun, 136; *aff'd*, S. C., 116 N. Y. 410; *Barney v. Griffin*, 2 N. Y. 365; *Collumb v. Caldwell*, 16 id. 484.) See, also, *Bank of Portchester v. Halstead* (20 Abb. N. C. 155).

An assignment, void on its face, cannot be reformed or validated by a supplementary assignment, so as to cut off a lien of a judgment recov-

ered after its execution, and before its reformation or attempted correction. (*Sutherland v. Bradner*, 116 N. Y. 410.)

7. An assignment of all the property contained in Schedule B, to pay the debts mentioned in Schedule A, and which referred to the schedules as annexed, though not annexed in fact, and not recorded in the office of the county clerk with the assignment, *held*, valid in an action to set it aside, as neither of the schedules was a necessary part of the assignment. (*Burghard v. Sondheim*, 50 N. Y. Super. Ct. [J. & S.] 116.) See, also, *Wronkna v. Killeen* (19 Daily Reg., No. 133; S. C., 3 Law Bull. 81); and see note 1 to form No. 261.

By section 3 of chapter 466 of the Laws of New York of 1877, as amended by chapter 318 of Laws of 1878, it is provided that a debtor making an assignment shall, at the date thereof or within twenty days thereafter, cause to be made, and delivered to the county judge of the county where such assignment is recorded, an inventory or schedule, containing

First. The name, occupation, place of residence, and place of business, of such debtor.

Second. The name and place of residence of the assignee.

Third. A full and true account of all the creditors of such debtor, stating the last known place of residence of each, the sum owing to each, with the true cause and consideration therefor, and a full statement of any existing security for the payment of the same.

Fourth. A full and true inventory of all such debtor's estate at the date of such assignment, both real and personal, in law and in equity, with the incumbrances existing

thereon, and of all the vouchers and securities relating thereto, and the nominal as well as actual value of the same according to the best knowledge of such debtor.

Fifth. An affidavit made by such debtor, that the same is in all respects just and true. (But, etc., see further provisions of that section, cited in note 1 to form No. 261, for proceedings by assignee in case the debtor shall omit, neglect or refuse to make and deliver such inventory or schedule within the twenty days required). See, also, as to such inventory, *Pratt v. Stevens* (94 N. Y. 387); *Matter of Leahy* (8 Daly, 124); *Warner v. Jaffray* (96 N. Y. 248).

8. Section 23 of chapter 466 of Laws of New York of 1877, as amended by chapter 464 of Laws of 1885, provides that the county judge [of the county] where the assignment is recorded, may, upon the application of the assignee and for good and sufficient cause shown, and upon such terms as he may direct, authorize the assignee to *sell*, compromise or compound any claim or debt belonging to the estate of the debtor. But such authority shall not prevent any party interested in the trust estate from showing upon the final accounting of such assignee that such debt or claim was fraudulently or negligently *sold*, compounded or compromised. *The sale of any debt or claim heretofore made in good faith by any assignee shall be valid, subject, however, to the approval of the county judge*, and the assignee shall be charged with and be liable for, as part of the trust fund, any sum which might or ought to have been collected by him. (Laws of N. Y. of 1885, p. 805).

The changes made by the amendment of 1885 in the section was by the insertion of the words above

printed in italics. The words "of the county," in brackets above, were omitted from the section as amended.

A general assignment is not vitiated by the insertion of a clause therein authorizing the assignee "to compromise or compound any claim by taking a part for the whole where they shall deem it expedient so to do." (*Gunther v. Richmond*, 18 Hun, 232.) So held in relation to an assignment made since the passage of the act of 1877. See also *Coyne v. Weaver* (84 N. Y. 386); *McConnell v. Sherwood* (id. 522).

The court to which an application is made by an assignee for the benefit of creditors for leave to compromise a claim due the estate may, in its discretion, require notice of the hearing thereof to be given to the creditors and may refer such application to a referee, with directions to give eight days' notice to the creditors named in the schedules, personally, when practicable, or by mail. (*Matter of Youngs*, 5 Abb. N. C. 346.) See, also, *Matter of Ransom* (8 Daly, 89); *Matter of Wooster* (10 id. 6); *Matter of Goldschmidt* (id. 38); *Anonymous v. Gelpke* (5 Hun, 245).

Section 26 of said chapter 466 of Laws of New York of 1877, as amended by chapter 318 of 1878, provides that the court, in its discretion, may order a trial by jury or before a referee, of any disputed claim or matter arising under the provisions of that act (of 1878) or the act thereby amended. (Laws of N. Y. of 1878, p. 410.) See *In re Feigelstock* (5 Law Bull. 71).

9. Section 2 of chapter 466 of Laws of 1877 as amended by chapter 294 of the Laws of 1888 provides as follows:

Every conveyance or assignment made by a debtor of his estate, real

or personal, or both, to an assignee for the creditors of such debtor, shall be in writing, and *shall specifically state therein the residence and the kind of business carried on by such debtor at the time of making the assignment, and the place at which such business shall then be conducted, and if such place be in a city, the street and number thereof, and if in a village or town, such apt designation as shall reasonably identify such debtor. Every such conveyance or assignment shall be duly acknowledged before an officer authorized to take the acknowledgment of deeds and shall be recorded in the county clerk's office in the county where such debtor shall reside or carry on his business at the date thereof.* An assignment by copartners shall be recorded in the county where the principal place of business of such copartners is situated. When real property is a part of the property assigned, and is situated in a county other than the one in which the original assignment is required to be recorded, a certified copy of such assignment shall be filed and recorded in the county where such property is situated. The assent of the assignee, subscribed and acknowledged by him, shall appear in writing, embraced in or at the end of, or indorsed upon the assignment, before the same is recorded, and, if separate from the assignment, shall be duly acknowledged. (Laws of N. Y. of 1888, p. 509.) See *Dutchess Co. Mutual Ins. Co. v. Van Wagonen* (132 N. Y. 398).

The changes made by the amendment of 1888 are indicated above by italics.

It will be observed that the statute does not, in terms, provide for the proof of the instrument or of the assent by a subscribing witness, but only for their acknowledgment by the assignor and assignee, respect-

ively. See note 11 to this form upon that subject.

Under an assignment for creditors the assignee is merely the representative of the debtor and must be governed by the express terms of his trust. (*Matter of Lewis*, 81 N. Y. 421.)

The material and essential characteristic of a general assignment is the presence of a trust, the assignee taking title, not as absolute owner, but merely as trustee for the performance of trust duties. (*Brown v. Guthrie*, 110 N. Y. 435.)

An assignment of the property of a debtor in trust for creditors, executed in the name of a debtor and duly acknowledged by an attorney duly constituted for that purpose, was held to be valid under the General Assignment Act of 1860, chapter 340, requiring every assignment to be in writing and duly acknowledged, and is effectual to vest in the assignee the title to the assigned property. (*Lowenstein v. Flauraud*, 82 N. Y. 494; *S. C.*, 11 Hun, 399.) See, also, *Darrow, Rec'r. v. Bruff* (36 How. 479); *Chandler v. Powers* (N. Y. Daily Reg., Dec. 28, 1883).

See, also, *McIlhargy v. Chambers* (117 N. Y. 532, rev'g *S. C.*, 51 Hun, 332), as to execution of assignment.

The statutes regulating such assignments have reference only to general assignments made by insolvent debtors for the benefit of their creditors, and the various provisions of those statutes are entirely inapplicable to the case of a partial assignment of a portion of the debtor's property for the benefit of a specified part of his creditors. (*Knapp v. McGowan*, 96 N. Y. 75)

By section 4 of title 4 of chapter 18 of part 2 of the Revised Statutes of New York, it is provided that it shall

not be lawful for an incorporated company to make any transfer or assignment in contemplation of the insolvency of such company, to any person or persons whatever. (1 N. Y. R. S. 603; 7th ed. 1534.) This section was repealed by Laws of 1882, chapter 402, but reinstated by chapter 434 of Laws of 1884.

Where it appears upon the face of a general assignment, that it was made by a manufacturing corporation in contemplation of insolvency, the instrument is void, though it provides for the ratable distribution of the proceeds among all the creditors. (*Sibell v. Remsen*, 33 N. Y. 95.)

Proof, however, that at the time of the transfer or assignment by a corporation it was in fact insolvent, is not conclusive evidence that the transfer or assignment was made "in contemplation of the insolvency of such company," within the meaning of the statute (1 R. S. 603, § 4), declaring such a disposition of its property unlawful and void; to come within the prohibition of the statute the act must have been done because of existing or contemplated insolvency. (*Paulding v. The Chrome Steel Company*, 94 N. Y. 334.)

10. An acknowledgment of an assignment for creditors before a notary who is not a party to the assignment is valid, although such notary is preferred as a creditor therein. (*Wendell v. Reves*, 26 Week. Dig. 239; *S. C.*, 6 N. Y. State Rep. 863.)

See, further, as to acknowledgment, *Camp v. Buxton* (34 Hun, 511; *S. C.*, 20 N. Y. Week. Dig. 479); *Claffin v. Smith* (35 Hun, 372; *S. C.*, 15 Abb. N. C. 241); *Hardman v. Bowen* (39 N. Y. 196; *S. C.*, 5 Abb. N. S. 332); *Britton v. Lorenz* (45 N. Y. 51, aff'g *S. C.*, 3 Daly, 22); *Wood v. Bach* (54 Barb. 134); *Smith v. Tim*

(14 Abb. N. C. 447); *Smith v. Boyd* (101 N. Y. 472, rev'g S. C., 10 Daly, 149); *Franev v. Smith* (125 N. Y. 44, rev'g S. C., 47 Hun, 119); *McIlhargy v. Chambers* (51 Hun, 332); *Britton v. Lorenz* (3 Daly, 22, aff'd, 45 N. Y. 51); *Randall v. Dusenbury* (39 N. Y. Super. Ct. 174; aff'd, S. C., 63 N. Y. 645); *Hooper v. Baillie* (118 N. Y. 413).

The statute of New York, chapter 466 of Laws of 1877, as amended by chapter 294 of Laws of 1888, provides that every such conveyance or assignment shall be duly acknowledged before an officer authorized to take the acknowledgment of deeds. (Laws of N. Y. of 1888, p. 509.) The same was contained in the section as originally enacted. See, also, for the entire section as amended note 9 to this form No. 259.

11. By section 2 of chapter 466 of the Laws of New York of 1877, as amended by chapter 294 of Laws of 1888, the assent of the assignee, subscribed and acknowledged by him, shall appear in writing, embraced in or at the end of, or indorsed upon the assignment, before the same is recorded, and, if separate from the assignment, shall be duly acknowledged. (Laws of N. Y. of 1888, p. 509.) The amendment of 1888 did not, however, relate to this provision of the section which was contained in the section as originally enacted, for

which, as amended, see note 9 to this form, No. 259.

See, also, *Royer Wheel Co. v. Fielding* (31 Hun, 274, 281; rev'd, 101 N. Y. 504), where it was held that the instrument was not a general assignment for creditors, and was not subject to the provisions of the act. *Schwartz v. Soutter* (41 Hun, 323; aff'd, S. C., 103 N. Y. 683); *Noyes v. Wernburg* (15 Abb. N. C. 164); *Scott v. Mills* (18 id. 330; S. C., 45 Hun, 263), *Franev v. Smith* (125 N. Y. 44), and note 11 to this form.

It will be observed that the statute above cited does not provide, in terms, for proof, by subscribing witness, either of the original instrument or of the assent, but only for their acknowledgment. It was held, in *Adams v. Houghton* (3 Abb. N. S. 46 [N. Y. Com. Pleas, Gen. Term, 1866]), that under the act of 1860 (Laws of 1860, p. 594), regulating assignments for creditors and requiring every such assignment to be in writing and duly acknowledged, an assignment for the benefit of creditors must be acknowledged by the debtor in person; that it cannot be acknowledged by his attorney or proved through the medium of a witness. But see as to execution by an attorney in the name of the debtor. *Lowenstein v. Flauraud* (82 N. Y. 494), cited in note 9 to this form; and *Chandler v. Powers* (N. Y. Daily Reg., Dec. 28, 1883).

See, also, *Statutory Construction Law*, § 15.

No. 260.

General assignment in trust for the benefit of creditors, with preferences, by the members of a copartnership.

This indenture, made the — day of —, in the year 1—, between John Doe, residing at this date in the (city) of —, in the county of — and State of New York, and Richard Roe, residing at this date in, etc., copartners in

trade, and dealers, at this date, in (hardware) at (No. — B. street), in the (said city) of —, in the county of —, and State of —, under the name, firm and style of Doe & Roe, parties of the first part, and John Stiles, of, etc., of the second part, witnesseth:¹ That whereas, the said parties of the first part are justly indebted to divers individuals (and corporations), and being in embarrassed circumstances and unable to pay all their said debts, are desirous of making a just and fair distribution of their property and effects among their creditors:

Now, therefore, this indenture witnesseth, that the said parties of the first part, in consideration of the premises and of the sum of one dollar, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, released, assigned, transferred and set over, and by these presents do grant, bargain and sell, release, assign and set over, unto the said party of the second part, and to his heirs and assigns forever,² all and singular the lands, tenements and hereditaments, situate, lying and being within the State of (New York); and also, all the goods, chattels, merchandise, bills, bonds, notes, book accounts, claims, demands, choses in action, books of account, evidences of debt and property of every name, nature and description whatever and wheresoever of the said parties of the first part (more particularly enumerated and described in the schedule hereto annexed, marked A, or intended so to be),³ except such articles as are by law exempt from execution, to have and to hold the same, and every part and parcel thereof, with the appurtenances, to the said party of the second part, his heirs, executors, administrators and assigns, in trust, nevertheless, and to and for the following uses, intents and purposes: that is to say, that the said party of the second part shall take possession of all and singular the lands, tenements and hereditaments, and all other the property and effects hereby assigned or intended so to be, and sell and dispose of the same, either at public or private sale, to such person or persons, for such prices (and upon such terms and conditions), as in his judgment may appear best and most

for the interest of the parties concerned, and convert the same into money; and also to collect all and singular the said debts, dues, bills, notes, accounts, claims, demands and choses in action, or so much thereof as may prove collectible, and thereupon to execute, acknowledge and deliver good and sufficient deeds, bills of sale, releases and other instruments of conveyance that may be necessary and proper to effect a sale and transfer of any and all the estates, property and effects, hereby conveyed, or intended so to be. And by and with the proceeds of such sales and collections, the said party of the second part shall first pay and disburse all the just, reasonable and usual expenses, costs, charges and commissions of making, executing and carrying into full effect, this assignment and the objects thereof⁴ (in doing which, the said party of the second part is hereby authorized to employ one or more agent or agents, attorney or attorneys, who shall be paid out of such proceeds a reasonable compensation for their services),⁵ (and the said party of the second part shall also, at the charge of the said trust fund, obtain, and at all times keep, suitable and reasonable insurance on the said property and effects hereby assigned and conveyed, and shall also pay the rents and taxes now due and to grow due upon the premises at present occupied by the said parties of the first part, until the said property and effects shall be sold and disposed of, or as long as it may be necessary to retain and use the said premises for the storage or safe keeping of said trust property and effects).⁶ And the residue of the proceeds of such sales and collections shall be considered as the net avails or proceeds of the property and effects hereby assigned. By and with the said net avails and proceeds, the said party of the second part shall pay and discharge the said debts of the said parties of the first part, in the order and manner following, that is to say:

[*First.* The said party of the second part shall pay and discharge the wages or salaries actually owing to the employes of said parties of the first part, at the time of the execution of this assignment, amounting to (about) the sum of — dollars, and should the assets of the said parties of the first part not be sufficient to pay in full said wages or

salaries, they shall be applied to the payment of the same *pro rata* to the amount of each such claim.]⁷

Second. The said party of the second part shall pay and discharge in full the several respective debts, bonds, and sums of money, due and to grow due from the said parties of the first part, or for which they are liable to the several persons and firms (and corporations) named and designated in the schedule hereto annexed, marked B, together with the interest due and to grow due on such debts, bonds, notes and sums respectively; and if said net proceeds shall not be sufficient to pay the said debts and liabilities, mentioned in said schedule B, in full, then the same shall be paid *pro rata* with such net proceeds, share and share alike, as far as the same will go in proportion to their respective amounts.

Third. By and with the rest, residue and remainder of said net proceeds, if any shall remain after the payment in full of the said debts and liabilities mentioned in said schedule B, the said party of the second part shall pay and discharge all the other copartnership debts, demands and liabilities whatsoever now existing, whether due or hereafter to become due, against the said parties of the first part, provided such remainder shall prove sufficient for that purpose; and if insufficient, then to apply such remainder to the payment and liquidation of such debts and demands, *pro rata*, share and share alike, according to their respective amounts, as far as such remainder will extend for that purpose.⁸

Fourth. By and with the rest, residue and remainder of said net proceeds, if any shall remain after paying all copartnership debts, the said party of the second part shall pay and discharge all other private or individual debts now existing of the said parties of the first part, or either of them, whether due or to grow due, provided the respective amounts of the individual debts of each of said parties does not exceed his portion of the surplus that may remain after paying all the said partnership debts; and if it should, then his interest in said surplus is to be divided *pro rata* among his individual creditors, in proportion to their respective demands; it being understood that no part of the said surplus which will

belong to each of said individual parties of the first part respectively, after the payment of the copartnership debts, is to be made liable for the individual debts of the other of them.⁹

And lastly, the said party of the second part shall return the surplus, if any remains after the payment of all debts due by the said parties of the first part, or either of them, to the said parties of the first part, their executors, administrators or assigns. (The provisions above made and designated as "Second," relating to preferences under this assignment, are hereby expressly declared to be intended to be subject to the provisions of chapter 503 of the Laws of New York of 1887, entitled ' An act, etc. (giving title of that chapter) passed June 2, 1886, to-wit: That such preferences shall not be effectual except to the amount of one-third in value of the estate hereby assigned left after deducting the wages and salary, the payment of which is above provided for, and the costs and expenses of executing this trust; and that should said one-third of the assets of said parties of the first part be insufficient to pay, in full, the said preferred claims, then the said assets shall be applied to the payment of the same, *pro rata*, to the amount of each such preferred claim, in the order and manner above provided, and the provisions above made in regard to the preference of claims are to be carried out only to the extent to which the same can be legally carried out under such statutory provisions).¹⁰

(And the said parties of the first part, for themselves, their and each of their heirs, executors, administrators and assigns, covenant and agree, to and with the said party of the second part, his executors, administrators and assigns, that they will, when requested, make, or cause to be made, such further assignments, deeds and conveyances as shall be necessary to carry into full and complete effect the intentions of the parties to these presents.)¹¹

And the said party of the second part doth hereby assent to and accept the said assignment and the trusts hereby created and reposed in him.¹²

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.¹³

J. D. [L. S.]
R. R. [L. S.]

Sealed and delivered in presence of
K. L.

(Acknowledgment of execution by all the parties substantially as in form No. 259.)

I, J. S., the assignee mentioned in the foregoing assignment, do hereby assent to and accept the said assignment, and the trusts created and reposed in me thereby.

In witness whereof, I have hereunto set my hand and seal this — day of —, 1—. ¹⁴

J. S. [L. S.]

(Acknowledgment by assignee as above.)

1. As to general requisites provided by the New York statute in regard to assignments for benefit of creditors, see § 2 of chapter 466 of Laws of New York of 1877, as amended by chapter 294 of Laws of 1888, cited in note 9 to form No. 259. Among other provisions of that section such assignment is required to be in writing, and to specifically state therein the residence and the kind of business carried on by the debtor at the time of making the assignment, and the place at which such business shall then be conducted, and if such place be in a city, the street and number thereof, and if in a village or town, such apt designation as shall reasonably identify such debtor. (Laws of N. Y. of 1888, p. 509.)

2. See the cases cited in note 1 to form No. 259 as to effect of these words following the name of the assignee.

3. In New York State, a schedule being required by statute (§ 3 of chap. 466 of Laws of 1877) to be

filed within the time prescribed, it is not now usual to annex a schedule describing the property to the assignment itself. Before the statute requiring such schedule, which was originally enacted in 1860, it was held that an inventory or schedule of the property assigned was not indispensable, as a condition precedent to the taking effect of the deed; and that the omission of it was not of itself sufficient to avoid an assignment: although it might be evidence of fraud. (*Kellogg v. Slawson*, 15 Barb. 56, and cases there cited.) See, also, *Moir v. Brown* (14 id. 39) decided in 1852, holding that the effect of not annexing a schedule which was referred to in the assignment as annexed and containing a more particular enumeration and description of the property assigned, which property was described generally in the assignment as "all the goods, chattels, etc., and property of the parties of the first part," was that the property was not transferred. But see *Burghard v. Sondheim* (50 N. Y. Super.

Ct. (J. & S.) 116); *Wronknew v. Killen* (19 Daily Reg., No. 133), cited in note 7 to form No. 259, and *Scott v. Guthrie* (10 Bosw. 408; S. C., 25 How. Pr. 512); *Spring v. Strauss* (3 Bosw. 607); *Hoptop v. Neidig* (17 Abb. Pr. 332); *Kercheis v. Schloss* (49 How. Pr. 284); *Turner v. Jaycox* (40 N. Y. 470), cited in note 1 to form No. 261, and *Emigrant Industrial Savings Bank v. Roche* (93 id. 74); *Franey v. Smith* (125 id. 44), cited in same note.

4. See note 3 to form No. 259, as to the compensation of assignee and provisions therefor.

Where the assignment authorized the trustees to take possession of the property and sell and dispose of the same upon such terms and conditions as in their judgment might appear best and most for the interests of the parties concerned, and convert the same into money, such assignment was held valid. (*Kellogg v. Slauson*, 11 N. Y. 302.) See, also, *Townsend v. Stearns* (32 id. 209); *Benedict v. Huntington* (id. 219); *Rapalee v. Stewart* (27 id. 310).

5. An assignment for the benefit of creditors contained a provision authorizing the assignee "to employ suitable agents, at a reasonable compensation, to be paid out of the effects assigned;" *held*, that the provision did not render the assignment void, as it conferred no authority beyond what the law would give to the assignee. (*Mann v. Whitbeck*, 17 Barb. 388.) See, also, *Jacob v. Remsen* (36 N. Y. 668); *Casey v. Janes* (37 id. 608); *Hynes v. Campbell* (39 N. Y. State Rep. 874; S. C., 15 N. Y. Supp. 506).

6. An authority to the assignee to insure the property, or to maintain an existing insurance upon it, so long as he may deem necessary, will

not vitiate the assignment. It confers no more power upon him than he would have possessed without such provision. (*Whitney v. Krows*, 11 Barb. 198.)

A direction to pay rent, taxes and assessments on the real estate until sold, is a necessary power to preserve the property, and the assignee would have been authorized to do it, if the authority was not included in the instrument itself. (*Van Dine v. Willett*, 24 How. Pr. 206; S. C., 38 Barb. 319.)

A tenant made an assignment in trust for the benefit of creditors. His assignee entered under the assignment without giving any notice to the landlord that he did not occupy as assignee. He continued to occupy until the landlord took measures to dispossess him. *Held*, that such assignee was liable for the rent becoming due during his occupancy. (*Astor v. Lent*, 6 Bosw. 612.) See, also, *Jones v. Hausman* (10 id. 168); *Eyre v. Beebe* (28 How. Pr. 333, 339).

An assignee for the benefit of creditors, under an assignment which contains no provision giving any preference to taxes, or special directions for their payment, will not be required, on application of mortgagees who are engaged in foreclosing a mortgage given by his assignor, and have possession of the lands through a receiver, to pay taxes in arrears, although the mortgaged lands may be an insufficient security. (*Matter of Lewis*, 81 N. Y. 421.)

As to whether taxes as a debt due to the State are entitled to a preference in payment from an insolvent estate, *quere?* If so, the State alone can assert the right. An individual cannot interfere in its behalf. (*Id.*)

7. It is provided by chapter 283 of Laws of New York of 1886, amend-

ing section 29 of chapter 466 of Laws of 1877, as previously amended by chapter 328 of Laws of 1884, that in *all distributions of assets under all assignments* made in pursuance of the act, the wages or salaries actually owing to the employes of the assignor or assignors at the time of the execution of the assignment, shall be preferred before any other debt, and should the assets of the assignor or assignors not be sufficient to pay in full all the claims preferred, pursuant to that section, they shall be applied to the payment of the same *pro rata* to the amount of each such claim.

The amendment of 1886 was by the insertion of the words above given in italics.

Under the above section as it read before the amendment of 1886, it was held that the instrument itself was not rendered void by the omission to insert therein a clause giving such preference; that the instrument was to be read in connection with the statute, as if such provision formed part of it, and so the statutory provision is impressed upon the trust fund in the hands of the assignee. (*Richardson v. Thurber*, 104 N. Y. 606, affg S. C., 39 Hun, 637.)

A statute imposing such a preference upon a voluntary assignment is not unconstitutional; the legislature may permit it to be made only on expressed conditions, and the assignor, by the act of making the assignment, accepts the conditions. (*Id.*)

See, also, *Johnston v. Kelly* (43 Hun, 379), to the same effect.

8. An assignment by a firm is invalidated by a preference of an individual debt of a partner out of the proceeds of the partnership property. (*First Nat. Bank of Portchester v.*

Halsted, 20 Abb. N. C. 155, and cases there cited.) This rule applies without reference to whether all the partners executing the assignment knew the fraudulent nature of the preference. (*Fourth Nat. Bank v. Burger*, 15 N. Y. State Rep. 101.)

See, further, as to assignments by firm for benefit of creditors, *Crook v. Rindskopf* (105 N. Y. 476, rev'g S. C., 34 Hun, 457), and the cases cited in note 13 to this form. See as to preference by bill of sale, *Loudon v. Martin* (79 Hun, 229); *Gomez v. Hagaman* (84 id. 148); *First Nat. Bank v. Wood* (86 id. 491).

9. An assignment for benefit of creditors, executed by the assignors as individuals and as members of a firm, is not invalidated by a provision for the return of the surplus to the assignors, "after payment of the debts of the parties of the first part," if the assignment clearly embodies an implied direction not to return the surplus until all the debts, firm as well as individual, are paid. (*First Nat. Bank of Portchester v. Halsted*, 20 Abb. N. C. 155.)

10. For provisions of chapter 503 of Laws of New York of 1887, see note 5 to form No. 259. See, also, *White v. Cotzhausen*, cited in note 4 to that form, and *Maas v. Falk* (146 N. Y. 34); *Spelman v. Freedman* (130 N. Y. 421, aff'g S. C., 54 Hun, 409); *Tompkins v. Hunter* (149 N. Y. 117, aff'g S. C., 75 Hun, 612); *Abegg v. Bishop* (142 N. Y. 286, rev'g S. C., 66 Hun, 8); *First Nat. Bank v. Bard* (59 Hun, 529).

11. This covenant is sometimes inserted in assignments for creditors.

12. It is necessary under the statute of New York, chapter 466 of 1877, that this assent of the assignee, subscribed and acknowledged by him, shall appear in writing, embraced in or at the end of or indorsed upon the assignment, before the same is recorded, and, if separate from the assignment, shall be duly acknowledged. (See § 2 of that chapter, cited in note 11 to form No. 259.)

13. See generally as to assignments by members of a copartnership, among other recent cases, *Crook v. Rindskopf* (105 N. Y. 476,

rev'g S. C., 34 Hun, 457); Haynes v. Brooks (116 N. Y. 487; aff'g S. C., 42 Hun, 528); Becker v. Leonard (42 Hun, 221); First National Bank of Champlain v. Wood (45 id. 411); Haynes v. Brooks (17 Abb. N. C. 152); Beste v. Burger (id. 162; aff'd, S. C., 110 N. Y. 644); Brown v. Halstead (id. 197); Eastern Nat. Bank v. Hulzhizer (2 N. Y. State Rep. 93); Adees v. Cornell (25 Hun, 78; aff'd, S. C., 93 N. Y. 572); Stadelman v. Loehr (47 Hun, 327); Friedburger v. Jaberg (20 Abb. N. C. 279); Klumpp v. Gardener (15 N. Y. State Rep. 100); Gorham v. Jervis (40 Alb. L. J. 93); Smedley v. Smith (28 N. Y. State Rep. 414; S. C., 8 N. Y. Supp. 100); and see the notes to form No. 259.

The statute (§ 2 of chapter 466 of Laws of New York of 1877), as amended by chapter 294 of Laws of 1888, provides that an assignment by copartners shall be recorded in the county where the principal place of business of such copartners is situated. The same provision was contained in the section as originally enacted.

A sole surviving partner of an insolvent firm may make a general assignment for the benefit of creditors containing preferences, of all the firm property for the benefit of the firm creditors, and without the assent of the representatives of the deceased partner, and in the absence of fraud, such an assignment cannot be disturbed by an unpreferred creditor. (Williams v. Whedon, 109 N. Y. 333, aff'g S. C., 39 Hun, 98.) See, also, Durant v. Pierson (124 N. Y. 444).

The act of 1860 (chapter 348) relating to assignments for the benefit of creditors (for which the act of 1876 was a substitute) was only intended to apply to assignments executed by resident debtors; and an assignment executed by a non-resident in accordance with the law of his own State, and not void by any law of this State, will, except in case of fraud, convey personal property here as against the claims of resident creditors. (Ackerman v. Cross, 54 N. Y. 29.)

14. See note 12 to this form.

No. 261.

Schedule to be annexed to assignment for benefit of creditors, when referred to as annexed.

1. Schedule marked A, referred to in the foregoing (or, annexed) instrument.

A just and true inventory of all the property, real and personal, which belonged to A. B. (or, to the said firm of Doe & Roe), on the — day of —, 1— (date of assignment).

Real estate.

One farm, situate, etc. (specify the whole of the real estate, with a convenient description of each lot or parcel).

Personal estate.

A bond (or, note) against E. F., dated —, 1—, for — dollars (and interest from —), on which is now due — dollars.

A book account against E. F., on which is now due — dollars.

One piece of black broadcloth, containing forty yards.

One piece of blue broadcloth, containing twenty-five yards (specifying the choses in action and articles of personal property).

2. Schedule marked B, referred to in the foregoing (or, annexed) instrument.

Statement of debts owing by said A. B. (or, by said firm of Doe & Roe), included in this schedule, and to be paid as provided in the foregoing (or, annexed) instrument.

A debt owing to E. F. & Co., on a promissory note, dated —, 1—, for the sum of — dollars, payable — days from date (with interest from —, 1—), which was given for merchandise, and on which is now due — dollars.

The like to G. H., for — dollars on account, for money loaned, etc., etc. (specifying all the debts to be embraced in this schedule.)¹

1. See, as to these schedules, note 7 to form No. 259.

A general assignment for the benefit of creditors, assigning "all goods, chattels, merchandise, bills, bonds, notes, book accounts, claims, demands, choses in action, judgments, evidences of debt and property of every name and nature whatsoever" (of the assignor), more particularly enumerated and described in the schedule hereto annexed, covers all personal property of the assignor, though none was enumerated or described in the specified schedule. (Turner v. Jaycox, 40 N. Y. 470, aff'g S. C., 40 Barb. 164.)

An instrument of assignment in terms conveyed all the property of the assignor, real and personal; an

inventory of his property was subsequently made and filed, in which a certain judgment was not inserted. Afterward, under the directions of the decree made upon the assignee's final accounting, which provided that the assignee should convey to H. (the assignor) all the real estate assigned to the assignee "and mentioned in the inventory and schedules and remaining unsold," and "should convey to A. B. all the rest and residue of the assigned estate, including cash, mortgages, judgments and all other personal property of every kind and nature whatsoever, including book accounts, debts due, etc., assigned to such assignee and particularly mentioned in the inventory and schedules filed in the office

of the clerk of U. county, on, etc., assignment to the assignee, and excepting only such property as is by the decree and assignment to A. B., although at the time of the latter assignment neither A. B. nor his assignor knew of the existence of that judgment. (*Emigrant Industrial Savings Bank v. Roche*, 93 N. Y. 374.)

The rule that general words in an assignment are restricted by a subsequent clause referring to a schedule annexed is subordinate to the rule requiring all instruments to be so construed as to give effect to the intention of the parties. (*Id.*)

No. 262.

Inventory or schedule required by Laws of New York, to be made and filed by a debtor making general assignment for creditors.

(Laws of N. Y. of 1877, chap. 466, § 3.)

Inventory made and filed pursuant to statute by A. B., residing in the (city) of —, in the county of —, and State of New York, by occupation a dealer in (hardware, etc.), at No. — — street in said (city), under assignment dated —, 1—, made by said A. B. to C. D., who resides at the (city of — aforesaid).¹

Inventory of property assigned by A. B. to C. D., accounts, notes, etc.

| NAME OF DEBTOR. | Residence. | Amount, nominal value. | Amount, actual value. | Interest from. | Nature of the debt and vouchers therefor. | Incumbrances. | Security for debt. |
|-----------------|------------|---------------------------|--------------------------|----------------|--|---------------|-----------------------|
| | | | | | | | |

Inventory of indebtedness of said B. on the — day of —, 1—.

| NAME OF CREDITOR. | Residence | Amount | Interest from. | Nature of the debt. | The consideration. | Security for debt. |
|-------------------|-----------|--------|----------------|---------------------|--------------------|--------------------|
| | | | | | | |

Inventory of goods, etc., assigned by A. B. to C. D., —, 1 —.

| | Nominal value. |
|--|----------------|
| | \$ |
| Deduct per cent for sales made for cash, etc.. | \$ |
| Actual value..... | \$ |

| | |
|--|------------|
| Real estate belonging to said A. B., —, 1 —. | |
| Premises No. — — street, in the (city) | |
| of —..... | \$1,000 00 |
| Less incumbrances thereon, viz.: A mortgage | |
| executed by said A. B. to C. D. for — dol- | |
| lars principal; and interest from —, 1 —. | 532 00 |
| | \$468 00 |
| Cash in bank —, 1 —..... | \$ |

Summary statement.

| | |
|--|------------|
| Goods, nominal value | \$5,000 00 |
| Fixtures in store No. — — street, nominal | |
| value | 500 00 |
| Accounts, notes, etc., nominal value..... | 1,400 00 |
| Real estate less incumbrances..... | 468 00 |
| Sundries | 10 00 |
| | \$7,378 00 |
| Deduct allowances above stated for cash sales, | |
| etc..... | 2,400 00 |
| | \$4,978 00 |

STATE OF NEW YORK, } ss.:
County of —,

A. B., of —, being duly sworn, says that he is the debtor
and assignor mentioned in the foregoing inventory or

schedule; that the said inventory or schedule is in all respects just and true.

A. B.

(Jurat as in form No. 32.)

[Or, as follows:]

In the Matter of the Assign-
ment of A. B. to C. D. for
the benefit of creditors. }

COUNTY OF —, ss.:

A. B., of —, being duly sworn, says that he is the assignor named in the above-mentioned assignment, which bears date the — day of —, 1—, and which is recorded in the office of the county clerk of the county of —, on the — day of —, 1—.

That the inventory and schedule hereto annexed contain a full and true account of all the creditors of said deponent; the last known residence of each creditor; also the sum owing to each creditor; also the true cause and consideration of such indebtedness in each case; also a statement of any existing security for the payment of any such debts; also a full and true inventory of all the estate, both real and personal, in law and equity, of deponent, at the date of said assignment and incumbrances existing thereon, and of all vouchers and securities relating thereto, and the nominal as well as actual value of such estate according to the best knowledge of deponent.

And deponent further says that the annexed inventory and schedules are in all respects just and true.

A. B.]

(Jurat as in form No. 32.)

1. Section 3 of chapter 466 of the Laws of New York of 1877, as amended by chapter 318 of the Laws of 1878, provides as follows in regard to this inventory or schedule:

§ 3. A debtor making an assignment shall, at the date thereof or within twenty days thereafter, cause to be made, and delivered to the county judge of the county where

such assignment is recorded, an inventory or schedule containing

1. The name, occupation, place of residence, and place of business, of such debtor.

2. The name and place of residence of the assignee.

3. A full and true account of all the creditors of such debtor, stating the last known place of residence of

each, the sum owing to each, with the true cause and consideration therefor, and a full statement of any existing security for the payment of the same.

4. A full and true inventory of all such debtor's estate at the date of such assignment, both real and personal, in law and in equity, with the incumbrances existing thereon, and of all vouchers and securities relating thereto, and the nominal as well as actual value of the same, according to the best knowledge of such debtor. See ch. 34 of Laws of 1891.

5. An affidavit made by such debtor, that the same is in all respects just and true. But in case such debtor shall omit, neglect or refuse to make and deliver such inventory or schedule within the twenty days required, the assignee named in such assignment shall, within thirty days after the date thereof, cause to be made, and delivered to the county judge of the county where such assignment is recorded, such inventory or schedule as above required, in so far as he can; and for such purpose said county judge shall, at any time, upon the application of such assignee, compel by order such delinquent debtor, and any other person to appear before him and disclose, upon oath, any knowledge or information he may possess, necessary to the proper making of such inventory or schedule. The assignee shall verify the inventory or schedule so made by him, to the effect that the same is in all respects just and true to the best of his knowledge and belief. But in case the said assignee shall be unable to make and file such inventory or schedule within said thirty days, the county judge may, upon application upon oath, showing such inability, allow him such

further time as shall be necessary, not exceeding sixty days. If the assignee fail to make and file such inventory or schedule within said thirty days or such further time as may be allowed, the county judge shall require, by order, the assignee forthwith to appear before him and show cause why he should not be removed. Any person interested in the trust estate may apply for such order and demand such removal. The books and papers of such delinquent debtor shall at all times be subject to the inspection and examination of any creditor. The county judge is authorized by order to require such debtor or assignee to allow such inspection or examination. Disobedience to such order is hereby declared to be contempt, and obedience to such order may be enforced by attachment. The inventory or schedule shall be filed by said county judge in the office of the clerk of said county in which said assignment is recorded.

See, also, *Produce Bank v. Morton* (67 N. Y. 199); *Pratt v. Stevens* (94 id. 387, rev'g S. C., 26 Hun, 229); *Franey v. Smith* (47 Hun, 119); *Easton Nat. Bank v. Hulshizer* (24 N. Y. Week. Dig. 266); *Denton v. Morrell* (43 Hun, 224); *Em. Ind. Savings Bank v. Roche* (93 N. Y. 374), cited in note 1 to form No. 261; *Matter of Leahy* (8 Daly, 124); *Warren v. Jaffray* (96 N. Y. 248); *Pierpont v. McGuire* (13 Misc. 70), generally as to such inventory.

2. See statute cited in note 1 to this form, also *Pratt v. Stevens* (94 N. Y. 387, rev'g S. C., 26 Hun, 229); *Produce Bank v. Baldwin* (49 How. Pr. 277), as to verification of inventory. The form of affidavit first given is exactly in compliance with the statute, but the one secondly above given is sometimes used.

CHAPTER IX.

Forms Relating to Auctioneers.

- No. 263.** Auctioneer's bond on his appointment.
264. Notice to comptroller of approval of bond of auctioneer by officer taking the same.
265. Oath of auctioneer to be taken before the officer to whom his account is exhibited.
266. Oath to be taken by clerk or copartner of auctioneer making sales at auction.
267. Oath to be taken by auctioneer's partner or clerk to be indorsed on account containing sales made by him.
268. Form of auctioneer's account of sales, etc.
269. Terms of sale by auctioneer, etc

No. 263.**Auctioneer's bond upon his appointment.**

(1 N. Y. R. S. 531, § 11.)

Know all men by these presents, that we, E. F., G. H. and I. K., of the (city) of —, in the county of —, and State of New York, are held and firmly bound unto the people of the State of New York, in the sum of five thousand dollars, to be paid to the said the People of the State of New York, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this — day of —, 1—.

The condition of this obligation is such, that whereas, the above-bounden E. F., being a citizen of said State, intends to become an auctioneer in the said county of —, in which he resides, and to transact his business and perform his duties as such in said county, pursuant to the statute in such case made and provided :

Now, therefore, the condition of this obligation is such, that if the said E. F. shall faithfully perform the duties of

his said office and pay the duties that are or shall be imposed by law, and that shall accrue on sales made by him or under his direction, by virtue of his said office, and shall render a true and accurate account semi-annually on the first Mondays of July and January in each year, of all goods sold or struck off by him, in the form and manner required by law, then this obligation to be void, otherwise to be and remain in full force and virtue, and said bond be deemed to have been forfeited by said obligors.¹

E. F. [L. S.]

G. H. [L. S.]

I. K. [L. S.]

Sealed and delivered in presence of

A. B.

STATE OF NEW YORK, }
City and (or, city of —), county of —. }

On this — day of —, in the year 1—, before me, the mayor (or, recorder) of said city (or, the county judge of the county of —), personally appeared E. F., G. H. and I. K., to me known to be the same persons described in and who executed the foregoing instrument, and to me severally acknowledged that they executed the same. And I hereby certify, pursuant to statute, that I have taken and approved of the said instrument, on the day aforesaid.²

A. M.

Mayor (or, Recorder) of the city of — (or, County Judge of — county).

[Indorsed in N. Y. county.]

COUNTY OF —.

I, A. M., mayor (or, recorder) of the city of — (or, name other magistrate), do hereby certify, that the within is a true copy of a bond taken and approved by me, and of the certificate of acknowledgment and approval thereon indorsed by me, and of the whole of said bond and certificate.

Dated, —, 1—.

M. N.,

Recorder, etc.]

1. See 1 N. Y. R. S. 531, § 11; 7th chap. 52, § 2 (N. Y. R. S., 7th ed., ed. 1273; Laws of N. Y. of 1838, 1278), as to this bond. The auction-

eer's account required by said section 2 to be rendered quarterly, is by section 3 of chapter 62 of Laws of 1846, required to be rendered semi-annually on the first Mondays of July and January in each year. By section 4 of said chapter 62, the bond is required to be renewed on or before the first Monday in January in each and every year. See, also, as to punishment for a failure to file bonds, etc., section 4 of same chapter, and as to forfeiture for selling without having given the required security, see § 15, 1 N. Y. R. S. 531; 7th ed. 1273.

2. See 1 N. Y. R. S. 531, §§ 12-14, as to approval of this bond. In regard to the statutes regulating auction duties and their payment, it is to be remarked that sections 1 and 4 of title 1 of chapter 17 of part 1 of the New York Revised Statutes were repealed by section 10 of chapter 62 of Laws of 1846, and sections 1 and 2 of the latter act substituted in their place. By section 1 of chapter 547 of Laws of 1866, section 1 of chapter 62 of Laws of 1846 was amended "so as to read as follows:" a new section following these words. By section 1 of chapter 106 of Laws of 1868, it is enacted "that chapter 547 of the Laws of 1866 entitled, etc., is hereby repealed," no substitute for the repealed section

being given. It seems, therefore, to be very doubtful as to whether section 1 of the Revised Statutes and section 1 of the act of 1846 have not been both repealed, since 1868. See *People, ex rel. The C. N. Bank, etc., v. Supervisors of Montgomery* (67 N. Y. 109).

The provisions of the act of 1853, "to punish frauds and suppress mock auctions" (§ 3, chap. 138, Laws of 1853), which requires all auctioneers doing business in the city and county of New York to obtain from the mayor a license on filing a bond as prescribed, did not, nor does the similar provision of the New York Consolidation Act of 1882 (§ 113 of chap. 410 of the Laws of 1882), which has superseded that of 1853, make it obligatory upon the mayor to grant a license to any person applying therefor and filing the bond required; but by necessary implication authorizes him to refuse a license to any person whose character and qualifications are not satisfactory to him, or when, in his judgment, the public interest requires it. (*People, ex rel. Schwab, v. Grant*, 126 N. Y. 473.)

The exercise of this discretion on the part of the mayor is not subject to supervision or control. (*Id.*)

No. 264.

Notice to comptroller of approval of bond of auctioneer by officer taking the same.

(1 N. Y. R. S. 531, § 14.)

To the Comptroller of the State of New York:

You are hereby notified, pursuant to statute, that on the — day of —, 1—, 1, the undersigned, as mayor (or, re-

corder) of the city of — (or, as county judge of the county of —), took and approved a bond of E. F., of —, with G. H. and I. K., of —, as sureties, given by said E. F. upon his becoming an auctioneer of the (city of —, in the) county of —, which said bond was dated and executed on the — day of —, 1—. ¹

Dated —, 1—.

A. M.,

Mayor, etc., of the city of — (or, County Judge of — county).

1. See § 14 of 1 N. Y. R. S. 531; 7th ed. 1273, as to this notice.

No. 265.

Oath of auctioneer to be taken before the officer to whom his account is exhibited.

(1 N. Y. R. S. 533, § 29.)

COUNTY OF —, ss.:

I, E. F., do solemnly and sincerely swear (or, affirm) that the account now exhibited by me, and to which I have subscribed my name, contains a just and true account of all the goods, wares, merchandise and effects, sold or struck off, or bought in by me, at public sale, or sold by me at private sale on commission, whether subject to duty or not, or sold, struck off or bought in as aforesaid, by others, in my name, or under my direction, or for my benefit, within the time mentioned in the within account; and of the days upon which the same were respectively sold; and that I have attended, personally, such of the said public sales as are not stated in the said account to have been made without my attendance; and that the causes therein mentioned, of my absence from such sales as I did not attend, are truly stated; that I have examined the entries of all the sales mentioned in said account in the book kept by me for that purpose, and fully believe this account to be in all respects correct; and further, that I have, during the time therein mentioned, conformed, in all things, to the true intent and meaning of the

laws regulating sales by auctioneers, according to the best of my knowledge, information and belief.¹

E. F.

Sworn (or, affirmed) before me, }
this — day of —, 1—. }

M. N.

Mayor (or, Recorder) of the city of — (or, County Judge of — county).

1. See § 29 of title 1 of chap. 17 be reduced to writing, indorsed on of part 1 of N. Y. R. S., 7th ed., the account, and subscribed by the 1276, as to this oath, which is to auctioneer taking it.

No. 266.

Oath to be taken by clerk or copartner of auctioneer before making sales at auction.

(1 N. Y. R. S. 530, § 8, as amended by chap. 62 of Laws of 1835.)

STATE OF NEW YORK, } ss.:
County of —, }

I, G. H., of —, do solemnly swear that I am the copartner (or, clerk) of A. B., an auctioneer duly authorized to act as such in the county of — (hired and employed by him in that capacity),¹(*) and that I will fully and faithfully perform the duties incumbent upon me as such copartner (or, clerk) by the provisions of title 1 of chapter 17 of part 1 of the Revised Statutes of the State of New York, and the acts amendatory thereof.²

(Jurat, as in form No. 32.)

G. H.

1. Insert these words in parentheses, in case of a clerk making the affidavit.

2. See § 8 of title 1 of chap. 17 of part 1 of N. Y. R. S. (7th ed., 1292), as to this affidavit.

No. 267.

Oath to be taken by auctioneer's partner or clerk to be indorsed on account containing sales made by him.

{1 N. Y. R. S. 534, § 30, as amended by Laws 1835, chap. 62.)

As in form No. 266, to (*), and from thence as follows:
And have been such clerk (or, partner) for six months last

past : That I have read the foregoing account subscribed by the said E. F., and believe the account so rendered to be just and true in every particular ; that all the sales therein mentioned, opposite to which my name (or, my initials) is (or, are) set, are all the sales liable to auction duties, public or private, made by me within the time mentioned in the said account ; and that the account of such sales so therein stated is just and true ; that such sales were made by me, in the absence of said E. F., who was unable to attend from the causes specified in his account ; and that in all the acts performed by me in behalf of said E. F., during the time aforesaid, I have endeavored to conform to the true intent and meaning of the laws regulating sales by auctioneers.¹

(Jurat as in form No. 32.)

G. H.

1. See §§ 30, 31 of title 1, chap. 17 of part 1 of N. Y. R. S. as to this affidavit.

No. 268.

Form of auctioneer's account of sales, etc

(1 N. Y. R. S. 533, § 27.)

I, E. F., an auctioneer residing in the (city) of —, in the county of —, in the State of New York, whose bond as such auctioneer, with — and — as sureties, was made and executed on the — day of —, 1—, do hereby render my account, pursuant to statute, as follows, viz.:

1. Schedule A, hereto annexed, contains a statement of the sums for which any goods or effects have been sold at every auction held by me or in my behalf, from the — day of —, 1—, the time of my entering into my bond, as aforesaid (or, the date of my last half-yearly account). Also of the days on which such sales were so made, and the amount of each day's sale, designating the sales made by myself or in my presence, and those made in my absence by a partner or clerk acting in my behalf, specifying the causes of such absence. Also a statement of the amount of the duties chargeable on all such sales under the pro-

visions of title 1 of chapter 17 of part 1 of the Revised Statutes.

2. Schedule B, hereto annexed, contains a statement of the amount of all private sales made by myself or any of my partners, on commission, and the days upon which such sales were made. Also a statement, etc. (as above, in the case of public sales).¹

(Annex schedules as given below, p. 355, and oaths, forms Nos. 265, 266 and 267.)

1. See § 27 of title 1 of chap. 17 of as to this account. See, also, note 1 part 1 of N. Y. R. S. (7th ed.) 1275, to form No. 263.

Schedule A.

| SUMS FOR WHICH GOODS WERE SOLD AT PUBLIC AUCTION. | Date of sale. | Amount of sale. | By whom made. | Cause of absence | Duties charge- able. |
|--|---------------|-----------------|---------------|------------------|-------------------------|
| | | | | | |
| | | | | | |

Schedule B.

| AMOUNT OF PRIVATE SALES. | Date of sale. | By whom made. | Duties chargeable. |
|--------------------------|---------------|---------------|--------------------|
| | | | |
| | | | |

No. 269.

Terms of sale of real estate by auctioneer, etc.

(Title of cause or proceeding.)

The premises described in the annexed advertisement of sale or, described as follows (inserting description), will be sold under the direction of, etc., upon the following terms :

1st. (Ten) per cent of the purchase-money of said premises will be required to be paid to the said — at the time and place of sale, and for which the — receipt will be given.

2d. The residue of said purchase-money will be required to be paid to the said — at his office in the — of —, on the — day of —, at — o'clock in the — noon, when the said — deed will be ready for delivery.

3d. The — is not required to send any notice to the purchaser ; and if he neglect to call, at the time and place above specified, to receive his deed, he will be charged with interest thereafter on the whole amount of his purchase, unless the — shall deem it proper to extend the time for the completion of said purchase.

4th. All taxes, assessments, and other incumbrances which, at the time of sale, are liens or incumbrances upon said premises, will be allowed by the — out of the purchase-money, provided the purchaser shall, previously to the delivery of the deed, produce to the — proof of such liens, and duplicate receipts for the payment thereof.

5th. The purchaser of said premises, or any portion thereof, will, at the time and place of sale, sign a memorandum of his purchase (and pay in addition to the said — per cent of the purchase-money, the auctioneer's fee of — dollars for each parcel separately sold, and the referee's (or, sheriff's) fee of two dollars for a deed.)

6th. The biddings will be kept open after the property is struck down, and in case any purchaser shall fail to comply with any of the above conditions of sale, the premises so struck down to him will be again put up for sale, under the direction of said — under these same terms of sale, without application to the court, unless the (*plaintiff's attorney*)

shall elect to make such application ; and such purchaser will be held liable for any deficiency there may be between the sum for which said premises shall be struck down upon the sale, and that for which they may be purchased on the re-sale, and also for any costs or expenses occurring on such resale.

(If the property is to be sold subject to any right of dower, charge or lien, state the same.)¹

Dated —, 1—.

(Signature of officer, etc., making the sale.)

(Annex notice of sale.)

Memorandum of sale.

I (or, we), have this — day of —, 1—, purchased the premises (first) described in the above annexed printed advertisement of sale, for the sum of — dollars, and hereby promise and agree to comply with the terms and conditions of the sale of said premises, as above mentioned and set forth?

Dated —, 1—.

(Signatures.)

—, 1—, received from A. B. (or, A. B. and C. D.) the sum of — dollars, being (ten) per cent of the amount bid by him (or, them) for property sold by me, under the judgment in the above entitled action (or, pursuant to the annexed notice of sale) referred to in the foregoing memorandum.

§ —.

(Signature.)

1. It is required by section 1678 of the New York Code of Civil Procedure, that if the property sold at a judicial sale, or any part thereof, is sold subject to a right of dower, charge or lien, that fact must be declared at the time of the sale.

See, also, *Day v. Hunt* (112 N. Y. 191).

2. See *Wadsworth v. Lyon* (93 N. Y. 219), as to effect of no memorandum of sale being signed at a judicial sale.

CHAPTER X.

Forms of Award by Arbitrators.**No. 270. Award by arbitrators.****271. Same, another form.****272. Revocation of the powers of arbitrators.****273. Notice of revocation of powers of arbitrators.****No. 270.****Award by arbitrators.**

(N. Y. Code Civ. Proc., §§ 2371, 2372.)

A. B.

and

C. D.

} In arbitration.

The undersigned, C. E., etc. (naming arbitrators), having been duly appointed arbitrators (or, a majority of the arbitrators duly appointed), as to certain matters in controversy between the above-named A. B. and C. D., by a bond (or, submission in writing), executed by the said parties, bearing date on the — day of —, 1 —, as by reference thereto will fully appear, and having heard the proofs and allegations of the said parties, and duly deliberated thereupon, do hereby award, determine and order, that (insert the decision of the arbitrators).

And we do further require the payment by (name party) of our fees and expenses as such arbitrators, to-wit: the sum of — dollars, for — days' attendance of each of us as such arbitrators, and the sum of — dollars for expenses, to-wit (naming same).

In witness whereof, we have hereunto set our hands (and seals) this — day of —, 1 —.¹

(Signatures of arbitrators.)

In presence of

H. A.

(Acknowledgment or proof as in forms Nos. .)²

1. All the arbitrators, selected as New York Code of Civil Procedure, prescribed by title 8 of chapter 17 of must meet together, and hear all the

allegations and proofs of the parties; but an award by a majority of them is valid, unless the concurrence of all is expressly required in the submission. Unless it is otherwise expressly provided in the submission, the award may require the payment, by either party, of the arbitrators' fees, not exceeding the fees allowed to a like number of referees in the Supreme Court; and also their expenses. (N. Y. Code Civ. Proc., § 2371.) See, also, *Brown v. Lyddy* (11 Hun, 451); *Lorenzo v. Deery* (26 id. 447).

2. See as to acknowledgment, etc., section 2372 of the New York Code of Civil Procedure, and other necessary requirements in order to entitle

the award to be enforced as prescribed by title 8 of chapter 17 of that statute. See, also, *Gidley v. Gidley* (65 N. Y. 169).

In legal contemplation an award takes effect when ready for delivery and the parties have been notified to that effect. (*N. Y. Lumber, etc., Co. v. Schneider*, 119 N. Y. 475.)

The authority to award against one or both parties the costs of the arbitration is incident to the general submission, and the arbitrators have a right to hold the award as security for the payment of their charges in the absence of a condition in the agreement of submission to the contrary. (*Id.*)

No. 271.

Award by arbitrators, another form.

(N. Y. Code Crim. Proc., §§ 2371, 2372.)

(Title, as in form No. 270.)

To all to whom these presents shall come or may concern :

We (naming arbitrators), to whom was submitted as arbitrators, the matter (or, matters) in controversy existing between — and —, as by the conditions of their mutual bonds or obligations (or, by a submission in writing) executed by the said parties respectively, and sealed with their respective seals, dated the — day of —, 1—, by reference thereto will more fully appear :

Now, therefore, know ye, that we, the arbitrators mentioned in said bonds, having heard the proofs and allegations of the said parties, and examined the matter (or, matters) in controversy by them submitted therein, do, therefore, make this award, in writing, that is to say, the said, etc.

In witness whereof, we have subscribed these presents, this — day of —, 1—. ¹ (Signatures of arbitrators.)

In the presence of

F. G.

(Acknowledgment or proof as in form No. 89.)

1. See notes to form No. 270.

No. 272.**Revocation of the powers of arbitrators.**

(N. Y. Code Civ. Proc., § 2383.)

(Title, as in form No. 270.)

To (naming arbitrators):

Take notice, that I hereby revoke your powers as arbitrators, under the submission made to you by — and myself, by our mutual bonds (or, submission in writing), dated —, 1—.

Witness my hand (and seal) this — day of —, 1—.¹

J. D. [L. S.]

(By L. M., his agent.)

1. See section 2383 of New York Code of Civil Procedure, as to this notice, which by that section is not required to be under seal. It is provided by the same section, that a submission to arbitration, made either as prescribed in title 8 of chapter 17 of that statute, or otherwise, cannot be revoked by either party, after the allegations and proofs of the parties have been closed, and the matter finally submitted to the arbitrators for their decision, also that any party to a submission may revoke it, whether he is a sole party to the controversy, or one of two or more parties on the same side.

A submission of disputes to arbitrators, governed by common-law principles and rules, may be competently made, notwithstanding the provisions of the Code of Civil Procedure on that subject; and the provision of section 2383, making a submission irrevocable by either party, after their allegations and proofs have closed, and the matter has been finally submitted, applies to such a submission. (N. Y. Lumber, etc., Co. v. Schneider, 119 N. Y. 475.)

See, also, as to revocation, *People, ex rel. Union Insurance Co. of Philadelphia, v. Nash* (111 N. Y. 310).

No. 273.**Notice of revocation of powers of arbitrators.**

(N. Y. Code Civ. Proc., § 2383.)

To E. F.:

Take notice, that I have this day revoked the powers of (naming arbitrators), arbitrators chosen to settle (the) mat-

ters in controversy between us, by an instrument of revocation, of which the following is a copy.¹

Dated —, 1—.

Yours, etc.,

J. D.

(Here insert copy of revocation.)

1. See note 1 to form No. 272. N. Y. Code of Civil Procedure; and See, as to liability of party who re- see, also, *People, ex rel. Union Ins. Co. of Philadelphia, v. Nash* (111 N. the submission, §§ 2384 and 2385, Y. 310).

Banks.

See Corporations.

BASTARDY.

See Proceedings for support of bastards.

BILL OF LADING.

See Agreements, No. 166.

CHAPTER XI.

Forms of Bills of Sale.

- No. 274.** Bill of sale of goods and chattels, with covenant of warranty.
275. Bill of sale of a United States registered vessel.
276. Same, of a United States enrolled vessel.
277. Bill of sale of personal property by brother to sister, in consideration of the maintenance of the vendor during his life.

No. 274.**Bill of sale of goods and chattels, with covenant of warranty.**

Know all men by these presents, that I, M. E., of, etc., party of the first part, for and in consideration of the sum of — dollars, to me in hand paid by E. F., of, etc., party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained, sold, granted, conveyed, assigned and delivered, and by these presents do grant, etc., unto said E. F., the following goods and chattels, viz. (describing them), (or, the goods and chattels described in a schedule hereto annexed, marked "A"), to have and to hold the said goods and chattels, and each and every of them, unto the said party of the second part, his executors, administrators and assigns forever [subject, however, (stating any claims or liens upon the goods, etc.)] (And I do hereby warrant the said horse to be sound in every respect, and without vice or blemish, and that he is well broken and kind and gentle in double and single harness and under the saddle.)¹

And I do hereby covenant, for myself and my executors and administrators, to and with the said party of the second part, to warrant and defend the said goods and chattels above described, hereby sold unto the said party of the sec-

and part, his executors, administrators and assigns, against all and every person and persons whomsoever.*

In witness, etc. (as in form No. 30).

M. E. [L. S.]

Signed, sealed and delivered in presence of

F. G.

(Acknowledgment or proof as in forms Nos. 6, etc.)

Schedule "A," referred to in annexed assignment.

The following is a schedule of all the goods and chattels referred to in and conveyed by the annexed bill of sale (describing and enumerating the goods).

Dated —, 1—

M. E.

(Signature of vendor.)

1. This covenant is intended for insertion in case of the sale and transfer of a horse.

2. See note 1 to form No. 188, for provisions of the statute of frauds of New York State.

Any words importing a bargain, whereby the owner of a chattel signifies his consent to sell and another person signifies his consent to buy it, at present, for a specified price, would be a sale and transfer of the right to a chattel, except for the statute of frauds. (*De Foncleur v. Shatlenkirk*, 3 Johns. 170.)

A warranty of title is implied in the

sale of a chattel. (*Scranton v. Clarke*, 39 N. Y. 220, aff'g S. C., 39 Barb. 273; *Sweetman v. Prince*, 26 N. Y. 224, 230.)

The rule is otherwise, however, if the chattel sold is not in the possession of the seller at the time of the sale. (*Scranton v. Clark*, *supra*.)

And it makes no difference that the chattel subsequently came into his possession. (*Id.*)

Where an express warranty is given, a broader one cannot be implied. (*Prentice v. Dike*, 6 Duer, 220.)

See also *English v. Hanford* (75 Hun, 428).

No. 275.

Bill of sale of a United States registered vessel.

To all to whom this present bill of sale may come, greeting:

Know ye, that I, A. B., of, etc., owner (or, we, A. B., of, etc. (½), and C. D., of, etc. (½) owners) of the bark (or, vessel) called The (insert name), for and in consideration of the sum of — dollars, to me (or, to us) in hand paid by E. F., of, etc., at or before the ensembling and delivery of these presents, the receipt whereof I (or, we) do hereby acknowledge, and

am (or, are) therewith fully satisfied and contented, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said C. D., all the hull and body of the said bark, etc., now lying at the port of —, together with all and singular, her tackle, apparel and furniture, and all other necessities thereunto belonging or appertaining, the certificate of whose registry is as follows, viz.:

No. —.

Permanent.

In pursuance of an act of the Congress of the United States of America, entitled "An act concerning the registry and recording of ships or vessels, A. B., of the (city) of —, in the county of —, and State of —, having taken and subscribed the oath (or, affirmation) required by the said act; and having sworn (or, affirmed) that he, said A. B., is the owner (or, that they, the said A. B. ($\frac{1}{2}$) and C. D. ($\frac{1}{2}$), of said place, are the owners) of the ship (or, vessel) called The —, of —, whereof M. N. is at present master, and is a citizen of the United States; and that the said ship (or, vessel) was built at — in the State of —, in the year 1—, as per register No. —, issued this day at this port, now canceled, property changed.

And said register having certified that the said ship (or, vessel) has — decks and masts, and that her length is — feet and — inches, her breadth — feet and — inches, her depth — feet and — inches; and that she measures — tons; that she is a (bark), has a stern, no galleries and — head, and the said (A. B.) having agreed to the description and admeasurement above specified, and sufficient security having been given, according to the said act, the said (bark) has been duly registered at the port of —.

Given under our hands and seals, at the port of —, this — day of —, in the year one thousand — hundred and —.

To have and to hold the said granted and bargained (bark) —, with all the appurtenances, unto the said C. D., his heirs, executors, administrators or assigns, to his and their only proper benefit and behoof forever, and I, the said

A. B. (or, we, the said A. B. and C. D.) do hereby avouch myself (or, ourselves) to be the true and only lawful owner (or, owners) of the said (bark) and her appurtenances, and that I have in me (or, that we have in us) full power, good right and lawful authority to dispose of the said (bark) and her appurtenances in manner as aforesaid. And furthermore, I, the said A. B. (or, we, the said A. B. and C. D.) do hereby (jointly and severally) covenant and agree to and with the said C. D., to warrant and defend the said (bark) and appurtenances, against the lawful claims and demands of all persons whomsoever.

In witness whereof, I, the said A. B. (or, we, the said A. B. and C. D.) have hereunto set my (or, our) hands and seals, the — day of — 1—.¹

A. B. [L. S.]

C. D. [L. S.]

Signed, sealed and delivered in presence of

G. H

(Acknowledgment, etc., as in forms Nos. 6, etc.)²

1. Vessels engaged in the foreign trade are registered, and those engaged in the coasting and home trade are enrolled; and the words "register" and "enrollment" are used to distinguish the certificates granted to these two classes of vessels. (The *Mohawk*, 3 Wall. 566.) See, also, *United States v. The Forrester* (Newb. Adm. 81).

Every vessel of the United States which is afloat is bound to have with her, from the officers of her home port, either a register or an enrollment. If found afloat, whether by steam or sail, without one or the other of these, and without the right one with reference to the trade she is engaged in, or the place where she is found, she is not entitled to protection under the laws of the United States, but is liable to seizure for such violation of the law; and in a foreign jurisdiction, or on the high

seas, can claim no rights as an American vessel. (*Badger v. Gutierrez*, 111 U. S. 734)

As to what vessels are entitled to registry and where and how they are to be registered, see *United States Revised Statutes*, §§ 4132-4136, 4141-4158.

For provisions in regard to registry of vessels sold to or becoming the property of foreigners; registry of vessels sold, or transferred, while without the limits of the United States; and new registry upon sale or alteration of vessel, see *id.*, §§ 4165, 4166, 4170, 4172.

All bills of sale of vessels registered or enrolled shall set forth the part of the vessel owned by each person selling and the part conveyed to each person purchasing. (*Id.*, § 4196.)

2. It is provided by section 4193 of the *United States Revised Stat.*

utes, that no bill of sale, mortgage hypothecation, conveyance or discharge of mortgage or other incumbrance of any vessel shall be recorded, unless the same is duly acknowledged before a notary public or other officer authorized to take acknowledgment of deeds.

By section 4192, *id.*, the bill of sale, etc., must be recorded in the office of the collector of the customs where such vessel is registered or enrolled, in order to be valid against any other person than the grantor, etc., his heirs and devisees. See, also, §§ 4194, 4195, *id.*, as to certified copies of the records, etc.

The acknowledgment of a mortgage of a vessel is needful, under the

above provisions, only for the purpose of authenticating it for record; as between the parties, or as against other persons having actual notice it is valid without acknowledgment or record. (*Moore v. Simonds*, 100 U. S. 145.)

That the filing of a chattel mortgage on a vessel, under a State law of New York regarded as notice, does not affect third parties unless the owner continues to reside in the State, see *Thomas v. Kosciusko* (11 N. Y. Leg. Obs. 38.)

The bill of sale of an unregistered or unenrolled vessel does not differ from an ordinary bill of sale, as in form No. 274.

No. 276.

Bill of sale of United States enrolled vessel.

To all to whom this present bill of sale shall come, greeting :

Know ye, that I, A. B., of, etc., sole owner (or, that we, A. B., of, etc., $\frac{1}{2}$, and C. D., of, etc., $\frac{1}{2}$, owners) of the (describing vessel) or vessel called The (insert name of vessel) of the burden of — tons or thereabouts, for and in consideration of the sum of — dollars, lawful money of the United States of America, to me (or, to us) in hand paid by E. F., of, etc., before the ensealing and delivery of these presents, the receipt whereof I (or, we) do hereby acknowledge, and am (or, are) therewith fully satisfied and contented, have granted, bargained and sold, and by these presents do grant, bargain and sell, unto the said E. F., all the hull and body of the said (describing vessel) or vessel, now lying at the port of —, together with all her tackle, apparel, furniture and all other necessities thereunto appertaining and belonging, the certificate of whose enrollment is as follows, *viz.* :

No. —. Enrollment in conformity to an act of the Congress of the United States of America, entitled "An act

for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same."

A. B., of the city of —, in the county of —, and State of —, having taken and subscribed the oath required by said act, and having sworn that he is a citizen of the United States, and is sole owner (or, that said A. B. and C. D. are the owners, each of one-half) of the (describing vessel), called The (insert name of vessel), of —, whereof M. N. is master, and as he hath sworn is a citizen of the United States, and that said (describing vessel) or vessel was built at —, in the State of —, in the year 1—, as per enrollment No. —, issued at this port.

And said A. B. having certified that the said (describing vessel) or vessel, has — deck and — masts, and that her length is — feet and — inches, her breadth — feet and — inches, her depth — feet and — inches, and that she measures — tons; and that she is a square-sterned schooner, has a round tuck, no galleries and a billet head; and the said A. B. having agreed to the description and ad-measurement above specified, and sufficient security having been given according to the said act, the said (describing vessel) has been duly enrolled at the port of —.

Given under — hand— and seal— at the port of —, this — day of —, in the year one thousand — hundred —.

To have and to hold the said granted and bargained — and premises, with the appurtenances, unto the said —, heirs, executors, administrators or assigns, to — only proper use, benefit and behoof forever. And —, the said —, do avouch — to be the true and lawful owners of the said — and her appurtenances, and have in — full power, good right and lawful authority to dispose of the said — and her appurtenances, in manner as aforesaid. And furthermore, —, the said, — do— hereby covenant and agree to warrant and defend the said — and appurtenances against the lawful claims and demands of all persons whatsoever, unto the said —.

In witness whereof, —, the said —, ha— hereunto set
— hand— and seal—, the — day of —, in the year of
our Lord one thousand — hundred and —.¹

(Signature of owner.)

Signed, sealed and delivered in presence of —.

(Acknowledgment or proof as in forms Nos. 6, etc.

1. See notes to last form, No. 275.

No. 277.

Bill of sale of personal property by brother to sister, in consideration of the natural love and affection and maintenance of the vendor during his life.

Know all men by these presents, that I, A. B., etc., in consideration of the natural love and affection which I have and bear for my sister, C. B., and also for divers other good causes and considerations, me, the said A. B., hereunto moving, have given, granted and confirmed, and by these presents do give, grant and confirm unto the said A. B., all and singular my goods, chattels, leases and personal estate whatsoever, in whose hands, custody or possession so ever they be: To have, hold and enjoy all and singular the said goods, chattels and personal estate aforesaid unto the said C. B., her executors, administrators and assigns, to the only proper use and behoof of the said C. B., her executors, administrators and assigns forever. And I, the said A. B., all and singular the said goods, chattels, personal estate and other the premises to the said A. B., her executors, administrators and assigns against me, the said C. B., my executors and administrators and all and every person and persons whatsoever shall and will warrant and forever defend by these presents; of all and singular which said goods, chattels, personal estate and other the premises I, the said A. B., have put the said C. B., in full possession by delivering to her one pewter dish, at the time of the sealing and delivery of these presents, in the name of the whole premises hereby granted. (*)

In witness, etc. (as in form No. 30). A. B. [L. S.]

Sealed and delivered in presence of
E. F.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

[As above, to (*), and from thence as follows: And in consideration of the premises, I, the said C. B., do hereby covenant, for myself, my executors and administrators, with the said A. B., that I will support and maintain, and comfortably and sufficiently clothe the said A. B., and in all respects care for and provide for him during the remainder of his natural life, and that I will pay to him the sum of — dollars, on the — days of — and — in each and every year during his said life. The said A. B. is, however, to reside in the said county of —, unless proper and sufficient board, lodging and maintenance cannot be obtained in that county.

In witness, etc. (as in form No. 163).

A. B. [L. S.]

C. B. [L. S.]

Sealed and delivered in presence of

M. H.

(Acknowledgment as above.)]

CHAPTER XII.

Forms of Bonds.

- No. 278.** Common form of bond.
279. Bond with condition to pay money at different times.
280. Same, with condition to keep mortgaged premises insured, and to assign the policy, etc.
281. Same, with condition to execute a conveyance.
282. Same, with condition of indemnity to a surety in a bond.
283. Same, with condition to indemnify on payment of a lost note.
284. Bond of indemnity to a sheriff.
285. Bond with condition for payment of an annuity.
286. A bottomry bond.
287. A respondentia bond.
288. Bond with condition to maintain a person during life.
289. Same, with condition to procure an heir, etc., to convey when of age, and for quiet enjoyment.
290. Same, with condition to marry a person, or pay, etc.
291. Same, with condition for performance of covenants.
292. Bail bond.
293. Bond with condition for jail limits.
294. Auctioneer's bond.
295. A penal bill.
296. A single bill.
297. Bond by legatee to executor when legacy is to be paid within one year, etc.
298. Bond on bringing suit for legacy.
299. Same, by a minor.
300. Bond of a general guardian.
301. Arbitration bond.
302. Bond of executor or administrator.
303. Bond of guardian *ad litem* in partition suit.
304. Same, in suit brought for a legacy. (See form No. 298.)
305. Bond of receiver.
306. Bond by guardian before receiving property.
307. Bond in action or special proceeding, general form.
308. Bond of assignee for creditors.
309. Bond of commissioner of highways.
310. Bond of new trustee appointed in place of deceased trustee of express trust.

- No. 311. Same, of trustee appointed in place of one whose resignation has been accepted.
312. Bond of auctioneer upon his appointment. (See form No. 263.)
313. Bond of sheriff.
314. Same, of deputy sheriff.
315. Bond to a town for support of a child.
316. Bond of a treasurer of a corporation.
317. Bond with warrant of attorney to confess judgment.
318. Bond of railroad corporation.
319. Bond of railroad corporation secured by mortgage.
320. Coupon to be annexed to bonds, forms Nos. 318, 319.

No. 278.

Common form of bond.

Know all men by these presents, that I, A. B., of the city of — and State of —, merchant, am held and firmly bound unto C. D., of the said city, gentleman (or, unto the people of the State of New York), in the sum of one thousand dollars (this amount is called the penal sum, and is commonly double the amount of the real debt, in order to cover interest, costs and other contingencies) good and lawful money of the United States, to be paid to the said C. D. (or, to the said people), his (or, their) certain attorney, executors, administrators and assigns, to which payment, well and truly to be made, I do bind myself, my heirs, executors and administrators, and every of them, firmly by these presents.

Sealed with my seal, dated the (first) day of —, A. D., one thousand — hundred and —.

(†) The condition of this obligation is such that if the above-bound A. B., his heirs, executors or administrators, or any of them, shall and do well and truly pay or cause to be paid, unto the above-named C. D. (or, unto the said people), his (or, their) certain attorney, executors, administrators and assigns, the just and full sum of — dollars, lawful money aforesaid, with legal interest for the same, on or before the (first) day of — in the year of our Lord one thousand — hundred and —, without fraud or further delay, then

this obligation to be void and of no effect, or else to remain and be in full force and virtue.

In witness whereof, etc. (as in form No. 30.)¹

A. B. [L. S.]

Signed, sealed and delivered in presence of

E. F.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

1. A bond given to a sheriff to obtain a release of a party detained on attachment, is sufficient to sustain an action against the obligor, notwithstanding the omission of a seal. (*Kelly v. McCormick*, 28 N. Y. 318, aff'g S. C., 2 E. D. Smith, 503.) See, also, *Stegman v. Hollingsworth* (39 N. Y. State Rep. 18; S. C., 14 N. Y. Supp. 465); *Town of Solon v. Williamsburgh Sav. Bank* (114 N. Y. 122); *Hyatt v. Dusenbury* (12 Civ. Pro. R. (Browne) 152); *Board of Education of Fairport v. Fonda* (77 N. Y. 350); *Northrup v. Garrett* (17 Hun, 497); *People v. Groat* (22 id. 164). But the giving of a bond in the form prescribed by the statute in relation to justices' courts (2 N. Y. R. S. 230, § 29) being necessary to confer jurisdiction upon the Marine Court of the city of New York to issue an attachment, an instrument without a seal is not sufficient, and an attachment issued thereon is void. (*Tiffany v. Lord*, 65 N. Y. 310.)

On a bond in a penalty of one thousand dollars, conditioned for the payment of five hundred dollars, in case of the breach of an agreement referred to, the sum mentioned in the bond is not to be regarded as a penalty, but as liquidated damages. (*Cotheal v. Talmage*, 9 N. Y. 551, aff'g S. C., 1 E. D. Smith, 573; *Smith v. Smith*, 4 Wend. 468.)

The condition of a bond, as well after as before forfeiture, is the amount due upon it. (*Strang v. Holmes*, 7 Cow. 224.)

As to the principal debtor in a money bond, the amount secured by the condition is the real debt which he is both legally and equitably bound to pay, whether it be more or less than the formal penalty of the bond. (*Mower v. Kip*, 6 Paige, 88; *Tazewell v. Saunders*, 13 Gratt. 354, 366.)

As a general rule, however, the surety in a bond is not liable beyond the amount of the penalty, although the principal and interest due by the condition of the bond exceeds that amount. But it seems that interest, by way of damages for the detention of the debt, during the time the defendant delays its collection by an improper or protracted litigation, may be recovered even as against a surety. (*Mower v. Kip*, *supra*.)

In an action against principals on a bond for the recovery of money only, when the sum actually due by the condition, without interest, equals the penalty of the bond, interest can be recovered as damages beyond the penalty. The penalty does not always limit the recovery. (*Lyon v. Clark*, 8 N. Y. 148, aff'g S. C., 1 E. D. Smith, 250.)

But in an action against a surety upon a bond for the breach of a condition other than the payment of money, the statute (2 R. S. 378, § 5 *et seq.*) provides that there be proof of, and a finding of the actual damages sustained, and though judgment be entered for the penalty, that there should be further judgment for exe-

cution for the damages assessed ; the penalty is the limit beyond which the liability of the surety will not go if he is prompt to pay it, and actual damage only up to the amount of the penalty and interest thereon, can in any case be recovered. (*Beers v. Shannon*, 73 N. Y. 292, rev'g S. C., 12 Hun, 161.)

The statute referred to in the above decision has been repealed by chapter 245 of the Laws of 1880. See *Republic of Mexico v. Ockershausen* (37 Hun, 533, 535).

Section 1915 of the New York Code of Civil Procedure provides that a bond in a penal sum, executed within or without the State, and containing a condition to the effect, that it is to be void, upon performance of any act, has the same effect, for the purpose of maintaining an action or special proceeding, or two or more successive actions or special proceedings thereupon, as if it contained a covenant to pay the sum, or to perform the act, specified in the condition thereof. But the damages to be recovered for a breach, or successive breaches, of the condition cannot, in the aggregate, exceed the penal sum, except where the condition is for the payment of money; in which case, they cannot exceed the penal sum, with interest thereupon, from the time when the defendant made default in the performance of the condition.

See, also, *Smedes v. Hooghtaling* (3 Caines, 48); *Brainard v. Jones* (18 N. Y. 35); *Hood v. Hayward* (124 id. 1; S. C., 26 Abb. N. C. 271; 24 N. Y. State Rep 229; 20 Civ. Proc. Rep. 47); *Cleveland v. Burnham* (25 Northwestern Rep., Wisc., 1885.)

One who signs as surety a bond which mentions no other surety nor leaves a blank, etc., for any other

name, cannot defend on the ground that he signed on condition that another person should also be surety, when the person to be secured was a minor, and, therefore, incapable of receiving or being charged with notice. (*Bangs v. Bangs*, 41 Hun, 41.)

The true rule stated to be that when there is nothing upon the face of the paper indicating that other sureties were expected to become parties to the instrument, and no fact is brought to the knowledge of the obligee before he accepts the instrument, calculated to put him on his guard in respect to that point, and to induce him, in the exercise of ordinary and reasonable caution and prudence, to make inquiry before accepting the security, the fault cannot be said to rest to any extent upon the obligee, and the failure to procure other sureties is no defense. (*Id.*)

Sureties who signed a bond, expecting another person to execute it, as a co-surety, and left it with the principal, who delivered it to the obligee, without its being executed by such third person, *held*, liable, as they placed it in the power of the principal to make the delivery (*Russell v. Freer*, 56 N. Y. 67.)

The fact that the name of such intended surety was erased from the body of the bond, *held*, not sufficient notice to put the obligee upon inquiry. (*Id.*)

The omission of a penalty in a bond, *held*, not to affect its validity. The only effect was to make the liability commensurate with the condition. (*Dodge v. St. John*, 96 N. Y. 260.)

The indorsement upon a bond "for value received, we become jointly liable in all respects with the original makers of the within bond," not under seal, signed by others than

the original obligors of the bond, obligors and necessary parties to an *held*, in view of the intent of the parties as indicated by the circumstances, action on the bond. (*Brown v. Champlin*, 66 N. Y. 214.)
not to make such indorsers joint

No. 279.

Same, with condition to pay money at different times.

As in form No. 278, to (†) and from thence as follows:

The condition of this obligation is such that if the above bound A. B., his heirs, executors or administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above-named C. D., his executors, administrators or assigns, the just and full sum of — dollars, lawful money as aforesaid, in manner following, to-wit: — dollars, part thereof, on the — day of — next ensuing the date hereof; — dollars more thereof, on the — day of — then next following, and — dollars, the residue, and in full payment thereof on the — day of —, which will be in the year of our Lord, one thousand — hundred and —; (with legal interest, at the time of each payment, upon all the principal then remaining unpaid), then this obligation to be void; but if default shall be made in the payment of any or either of the said sums on the days and times hereinbefore mentioned and appointed for payment thereof respectively, then this bond shall remain in full force and virtue.

In witness, etc., as in last form, No. 278.¹

A. B. [L. S.]

Signed, sealed and delivered in presence of

E. F.

(Acknowledgment, etc., as is forms Nos. 6, etc.)

1 Where the condition of a bond payment was to be made. (*Fellows v. Harrington*, 3 Barb. Ch. 652.)
dated December 14, 1833, was that the obligor should pay to the obligee the sum of \$3,200, to be paid in manner following, viz.: \$1,000 on the first day of April next, the remainder in four annual payments thereafter, of \$550 each, interest annually; *held*, that the obligee was not entitled to any interest during the interval between the date of the bond and the 1st of April, 1834, when the first See, also, as to construction of bonds for payment of money by installments, *French v. Kennedy* (7 Barb. 452); *Lanning v. Cole* (8 How. Pr. 148); *Cook v. Clark* (68 N. Y. 178, aff'g S. C., 3 Hun, 247); *Archibald v. Thomas* (3 Cow. 284); *Farmers' Loan and Trust Co. v. Hunt* (16 Barb. 514); and see note 1 to last form, No. 278, generally as to bonds.

No. 280.

**Same, with condition to keep mortgaged premises insured,
and to assign the policy, etc.**

As in form No. 278, to (†) and from thence as follows :

Whereas, by a certain indenture of mortgage bearing even date herewith, the said A. B., as collateral security for the payment of the sum of money hereinafter mentioned, hath mortgaged to the said C. D. all that certain lot, piece or parcel of land situate, etc. (describing the premises as in the mortgage) (or a certain lot, etc., described in the said mortgage, as by reference thereto will more fully appear) :

Now, therefore, the condition of this obligation is such that if the said A. B., his heirs, executors or administrators do, and shall well and truly pay, or cause to be paid, to the said C. D., his executors, administrators or assigns, the sum of — dollars, lawful money of the United States, (stating the time or times and manner of payment) without fraud or other delay ; and shall also keep a certain brick dwelling-house, etc. (describing the building intended) or (the buildings now standing or hereafter to be erected on the said mortgaged premises) insured against loss or damage by fire in some solvent incorporated insurance company in this State, so long as the sum of money herein mentioned, or any part thereof, shall remain unpaid, to the amount of — dollars at least, and shall assign and keep assigned to the said C. D., his executors, administrators or assigns, the policy or policies of such insurance, so that there shall be at all times while the said sum of money herein mentioned, or any part thereof, shall be or remain unpaid in the hands or possession of the said C. D., his, etc., a good and sufficient policy or policies of insurance as above mentioned, then this obligation to be void, otherwise to be and remain in full force and virtue.

And in case of failure of said A. B. so to insure, the said C. D. may effect or continue such insurance in the name of said A. B., or otherwise, and the premium paid therefor shall be charged and become a part of the said principal sum herein secured to be paid.

And it is further provided that in case any installment of principal, or any part thereof, or any interest moneys, or any part thereof, hereby secured to be paid, shall remain due and unpaid for the space of sixty days, after the same shall by the terms hereof become due and payable, that then, and in that case the whole principal sum hereby secured to be paid, together with the interest thereon, shall (at the option of the said obligee, his executors, etc.), become due and payable forthwith, any thing herein contained to the contrary notwithstanding.¹

In witness, etc. (as in form No. 30).

A. B. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

1. That such a condition is valid See, also, note 1 to form No. 278, as see *Rubens v. Priundle* (44 Barb. 336). to bonds generally.

No. 281.

Bond with condition to execute a conveyance.

As in form No. 278, to (†) and from thence as follows :

The condition of this obligation is such, that if the said A. B., on or before the — day of — next ensuing the date hereof, or in case of his death before that time, if the heirs of the said A. B., within three months next after his decease (if such heirs shall be then of full age, or if within age, then within three months after such heirs shall be of full age), shall and do, upon the reasonable request and at the charges of the said C. D., his heirs and assigns, make, execute and acknowledge, or cause so to be, all and every such deed or deeds, conveyance or conveyances whatsoever, which shall be needful for conveying and confirming unto the said C. D., his heirs and assigns, a good, absolute and indefeasible estate of inheritance in fee-simple, clear of all incumbrances of and in a certain messuage, etc., with the appurtenances ; and if in the meantime and while and until the same deed or deeds shall be executed, the said A. B., his heirs and assigns, shall and do

permit and suffer the said C. D., his heirs and assigns, peaceably and quietly to have, hold and enjoy the same messuage and tract of land, then the above obligation to be void or else it shall be and remain in full force and virtue.

In witness, etc., (as in form No. 30.)¹

A. B. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

1. See note 1 to form No. 278.

No. 282.

Bond with condition of indemnity to a surety in a bond.

As in form No. 278, to (†) and from thence as follows:

The condition of this obligation is such that whereas the above-named C. D., at the special instance and request of the above-bound A. B., and for his debt, together with and as well as he, the said A. B., are held and firmly bound unto a certain E. F., of, etc., in and by an obligation bearing even date herewith, in the penal sum of four thousand dollars, lawful money as aforesaid, conditioned for the true payment of two thousand dollars, like money, on or before the first day of May next ensuing the date of the said obligation, together with lawful interest for the same as by the same obligation and condition thereof, relation being thereunto had, appears; if, therefore, the said A. B., his heirs, executors or administrators, shall, on or before said first day of May, well and truly pay, or cause to be paid, unto the above-named E. F., his executors, administrators or assigns, the aforesaid debt or sum of two thousand dollars, with interest, in the discharge of the said recited obligation, and also shall from time to time, and at all times hereafter, well and sufficiently save, defend, keep harmless and indemnify the said C. D., his heirs, executors and administrators, and his and their goods and chattels, lands and tenements of and from the said obligation, and of and from all actions, costs and

damages for or by reason thereof, then this obligation to be void, or else to be and remain in full force and virtue.

In witness whereof (as in form No. 30.)¹

A. B. [L. s.]

Sealed and delivered in presence of

G. H.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

1. See note 1 to form No. 278, and see *Jones v. Bacon* (145 N. Y. 446).

No. 283.

Bond, with condition to indemnify on payment of a lost note.

As in form No. 278, to (†) and from thence as follows :

Whereas, the above-named E. F., by his promissory note signed by him for the said G. F., his father and himself, dated the — day of —, 1—, did promise to pay unto Y. Z. or order, — dollars, sixty days after date, for value received, and such said note was afterward indorsed by the said Y. Z. and others, and became the property of A. B., of —, as the said A. B. avers; and whereas, the said A. B. alleges he sent the said note by the mail on the — day of — last, to the above-named C. D., to be received by him for his, the said A. B.'s use; which mail being robbed and the note not having been offered for payment, it is apprehended the said note was stolen out of the said mails or otherwise lost; and whereas, the said E. F. and G. F. have, on the day of the date hereof, at the request as well of the said A. B. as of the said C. D., and upon his, the said C. D., promising to indemnify the said E. F. and G. F., and deliver up to them the said note to be canceled, when found, paid the said C. D. the sum of — dollars, in full satisfaction and discharge of the said note (the receipt whereof the said C. D. does hereby acknowledge), the condition, therefore, of the above written obligation is such, that if the said C. D., his heirs, executors or administrators, or any of them, do and shall, from time to time, and at all times hereafter, save, defend and keep harmless and indemnified the said E. F. and G. F., their executors and administrators, of, from and against the said note of — dollars, and of and from all costs, dam-

ages and expenses that shall or may happen to arise therefrom, and also deliver, or cause to be delivered up, the said note, when and so soon as the same shall be found, to be canceled, then, etc.

In witness, etc. (as in form No. 30).¹

A. B. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

1. As to undertaking in action upon lost negotiable paper under New York Code of Civil Procedure, see section 1917 of that statute, and see *Scott v. Meeker* (20 Hun, 171); *Frank v. Wessels* (64 N. Y. 155); *Wright v. Wright* (54 id. 437); *Smith v. Young* (2 Barb. 545); *Desmond v. Rice* (1 Hilt. 530). For form of such undertaking see form No. 966, *Lansing's Forms of Civil Procedure*, vol. 2. In action prosecuted or de-

fended by the people of the State, or by a public officer in their behalf, the people or the public officer may prove the contents of a lost note or bill of exchange by parol or other secondary evidence, and may recover or set off the amount due thereupon, without giving any security to the adverse party. (Id., § 1918.)

See, also, generally as to bonds, note 1 to form No. 278.

No. 284.

Bond of indemnity to a sheriff.

Know all men by these presents that we, A. B., C. D. and E. F., are held and firmly bound unto A. M., sheriff of the county of —, in the sum of — dollars, to be paid to said A. M., his executors, administrators or assigns, to which payment, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals this — day of — in the year 1—.

Whereas, a writ of *feri facias* (or, of execution) issuing out of the Supreme Court of Judicature of the people of the State of New York, in favor of the above-named A. B. against Y. Z., hath been directed and delivered to the said A. M., sheriff of the county of —, by virtue of which the said sheriff, at the request and by the direction of the said A. B., hath seized and levied on (or is about to seize and

levy on) certain goods and chattels alleged by the said A. B. to belong to the said Y. Z., but which are claimed by O. P. (or, by other persons):

Now, therefore, the condition of this obligation is such that if the said A. B. shall well and truly indemnify and save harmless the said A. M., the sheriff aforesaid, and his deputies, and the persons acting under his or their authority, and each and every of them, against all suits, actions, judgments, executions, troubles, costs, charges and expenses arising, or which may be had or made against him, them, or any of them, by reason or in consequence of such levy and seizure, or of the subsequent proceedings thereon, then this obligation shall be void, otherwise it shall remain in full force and virtue.¹

A. B. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

Sealed and delivered in presence of

E. F.

(Acknowledgment or proof as in forms Nos. 6, etc.)

1. As to extent of recovery by a sheriff upon a bond of indemnity, see *Chamberlain v. Beller* (18 N. Y. 115); *Horning v. Hoppock* (15 id. 409, aff'g S. C., 3 Duer, 20); *Griffiths v. Hardenbergh* (41 id. 464); *Bowe v. Wilkins* (105 id. 322); *Alston v. Conger* (66 Barb. 272); *Clark v. Woodruff* (83 N. Y. 518, aff'g S. C., 18 Hun, 419); *Reilly v. Coleman* (62 How. Pr. 289); *Chapman v. O'Brien* (39 N. Y. Super. Ct. (J. & S.) 244); *Preston v. Yates* (17 Hun, 92); *Same v. Same* (24 id. 534); *Johnson v. Gilbert* (9 id. 463); *Miles v. Brown* (37 N. Y. Super. Ct. (J. & S.) 400); *Home Ins. Co. v. Watson* (59 N. Y. 390); *Dyett v. Hyman* (37 State Rep. 251); S. C., 13 N. Y. Supp. 895); *Am. Surety Co. v. Thurber* (121 N. Y. 655), among other cases.

No. 285.

Bond for the payment of an annuity.

As in form No. 278, to (†) and from thence as follows :

Whereas, the above bound A. B., on the day of the date of the above written obligation, has had and received to his own use, of and from the above-named C. D., the sum of — (the receipt whereof is hereby acknowledged), in consideration whereof the said A. B. has agreed to pay the said C. D.

an annuity, or clear yearly sum of —, for and during his natural life, to be paid in the manner hereinafter mentioned (or, make other proper recitals, according to the facts); now the condition of this obligation is such that if the above bound A. B., his heirs, executors and administrators, or any of them, do and shall, yearly and every year during the natural life of the said C. D., well and truly pay, or cause to be paid, to him, the said C. D., or his assigns, the clear yearly sum of —, in quarter-yearly payments of —, each payable on the first days of each and every January, April, July and October, in each and every year, which shall occur during the natural life of the said C. D. (and shall also pay the proportion of said annuity which shall accrue between the last payment to be made as aforesaid and the date of the death of the said C. D.), then this obligation shall be void; but if default be made in any of said quarter-yearly payments, or any part of them, then the same shall remain and be in full force and virtue.¹

A. B. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment or proof as in forms Nos. 6, etc.)

1. See note 1 to form No. 278, generally as to bonds. As to apportionment of annuities, see chapter 542 (p. 616) of the Laws of New York of 1875.

is not retrospective. (*Irving v. Rankine*, 13 Hun, 147.)

It is well settled that at the common law there can be no apportionment of annuities. (*Id.*)

The apportionment under that act

No. 286.

Bottomry bond.

Know all men by these presents, that I, A. B., commander and two-thirds owner of the ship —, for myself and C. D., remaining third owner of the said ship, am held and firmly bound unto E. F. in the penal sum of — dollars, for the payment of which, well and truly to be made unto

the said E. F., his heirs, executors, administrators or assigns, I hereby bind myself, my heirs, executors and administrators, firmly by these presents.

In witness whereof, I have hereunto set my hand and seal this — day of —, in the year of our Lord one thousand — hundred and —.

Whereas, the above bound A. B. hath borrowed, taken up and received of the said E. F., the full and just sum of — dollars, which sum is to run at respondentia on the block and freight of the ship —, whereof the said A. B. is now master, from the port or road of —, on a voyage to the port of —, having permission to touch, stay at and proceed to all ports and places within the limit of the voyage, at the rate or premium of — per cent for the voyage. In consideration whereof, usual risks of the seas, rivers, enemies, fires, pirates, etc., are to be on account of the said E. F. And for the further security of the said E. F., the said A. B. doth by these presents, mortgage and assign over to the said E. F., his heirs, executors, administrators and assigns, the said ship — and her freight, together with all her tackle, apparel, etc. And it is hereby declared that the said ship — and her freight is thus assigned over for the security of the respondentia taken up by the said A. B., and shall be delivered to no other use or purpose whatever until payment of this bond is first made, with the premium that may become due thereon.

Now the condition of this obligation is such that if the above bound A. B., his heirs, executors or administrators, shall and do well and truly pay, or cause to be paid, unto the said E. F., or to his attorneys in —, legally authorized to receive the same, their executors, administrators or assigns, the full and just sum of — dollars, being the principal of this bond, together with the premium which shall become due thereupon, at or before the expiration of ninety days after the safe arrival of the said ship — at her moorings in —, or in case of the loss of the said ship —, such an average as by custom shall have become due on the salvage; then this obligation to be void and of no effect; otherwise to remain in full force and virtue. Having signed

to three bonds of the same tenor and date, the one of which being accomplished, the other two to be void and of no effect.¹

A. B., for self and C. D. [L. S.]

Signed, sealed and delivered in the presence of

G. H.

I. K.

1. A bottomry bond is a bond given for a loan of money upon the security of a vessel and its accruing freight, its payment being dependent upon maritime risks, to be borne by the lender. (*Cole v. White*, 26 Wend. 511.) See, also, *The Draco* (2 Sumn. 157).

Whether the doctrine applies to navigation on the lakes, *query?* (*Id.*)

The essential difference between a bottomry and a simple loan is, that in the latter, the money is at the risk of the borrower, and must be paid at all events; while in the former, it is at the risk of the lender during the voyage, and the right to demand payment depends on the safe arrival of the vessel. It is the fact that the perils of the sea are at the risk of the lender, which gives him the right of reserving any rate of interest agreed upon without incurring the penalties of usury. (*The Mary*, 1 Paine, 671; *The Atlantic*, Newb. Adm. 514.)

Though the form of bottomry bonds differs in different countries, in respect to the obligation of the owners the established doctrine in England and America is that the owners are not personally bound, except to the extent of the fund pledged which comes into their hands. To this extent they may be said to be personally bound, as they cannot subtract the fund and refuse to apply it to the discharge of the debt. (*The Virgin v. Vyfhius*, 8 Pet. 538.)

Where the value of the ship, being

the only fund out of which payment can be made, falls short of the full amount due upon the bond, this is the misfortune of the lender, and not the fault of the owners; the latter are not to be personally responsible because the fund turns out to be inadequate. So *held*, on a bond made by the master as such. (*Id.*)

A valid, bottomry bond may be made by the owner of a vessel, either in a foreign or home port. (*The Draco*, 2 Sumn. 157; *The Mary*, *supra*; *The Panama*, Olc. 343.)

Such a bond is equally valid, whether made for a definite period of time, or for a specified voyage. (*The Draco*, *supra*.)

It is only when making a bottomry bond is a necessary step, abroad, that the master can give one. If the owner can be consulted he must be. (*The Archer*, 23 Fed. Rep. 350; 23 Blatchf. 186; *The Giulio*, 27 Fed. Rep. 318.)

An instrument cannot be enforced as a bottomry bond, in which the master binds himself absolutely, as well as the vessel and cargo, to repay the loan in a specified time, and does not set out any particular voyage, on which the amount shall be risked. (*The Clotilde and cargo*, 1 Hask. 412.)

See, also, *Braynard v. Hoppock* (32 N. Y. 571, affg 7 Bosw. 157); *Northwestern Ins. Co. v. Ferward* (36 N. Y. 139); *Kelly v. Cushing* (48 Barb. 269); 3 Alb. L. J. 480, as to validity of bottomry bonds.

No. 287.

A respondentia bond.

Know all men by these presents, that we, J. P. F., commander of the ship —, in the service of —, and P. D. of —, are held and firmly bound to H. B. of —, merchant, in the sum or penalty of — dollars, of good and lawful money of the United States to be paid to the said H. B., or to his certain attorney, executors, administrators or assigns, to which payment well and truly to be made we bind ourselves jointly and separately, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, dated this — day of —, in the year of our Lord, one thousand — hundred and —.

Whereas, the above-named H. B. has on the day of the date above written, advanced and lent unto the said J. P. F. and P. D. the sum of — dollars upon the goods and merchandises and effects laden and to be laden on board the good ship or vessel called the —, of the burden of — or thereabouts, now riding at anchor in —, outward bound to —, and whereof J. P. F. is commander, by his acceptance of a bill of exchange to that amount at — date for the account of them, the said J. P. F. and P. D., now the condition of this obligation is such, that if the said ship or vessel do and shall with all convenient speed proceed and sail from and out of the said —, on a voyage to any port or place, ports or places in the —, or elsewhere beyond the —, and from thence do and shall sail, return and come back into the said —, at or before the end and expiration of — calendar months to be accounted from the day of the date above written, and there to end her said intended voyage (the dangers and casualties of the seas excepted), and if the said J. P. F. and P. D., or either of them, their or either of their heirs, executors or administrators, do and shall within — days next after the said ship or vessel shall be arrived at her moorings in the said —, from her said intended voyage, or at or upon the end and expiration of the said — calendar months to be accounted as aforesaid

(which of the said times shall first and next happen), well and truly pay or cause to be paid unto the said H. B., his executors, administrators or assigns, the full sum of — dollars of lawful money of the United States, together with — dollars of like money per calendar month for each and every calendar month, and so proportionably for a greater or lesser time than a calendar month for all such time, and so many calendar months as shall be elapsed and run out of the said — calendar months, over and above — calendar months to be accounted from the day of the date above written, or if in the said voyage and within the said — calendar months to be accounted as aforesaid an utter loss of said ship or vessel by fire, enemies, men-of-war, or any other casualties shall unavoidably happen, and the said J. P. F., and P. D., their heirs, executors or administrators, do and shall within — calendar months next after such loss, well and truly account for (upon oath if required) and pay unto the said H. B., his executors, administrators or assigns, a just and proportionable average on all the goods and effects of the said J. P. F., carried from — on board the said ship or vessel, and the net proceeds thereof and on all other goods and effects which the said J. P. F. shall acquire during the said voyage for or by means of such goods, merchandises and effects, and which shall not be unavoidably lost, then the above written obligation to be void and of none effect; else to stand in full force and virtue.¹

J. P. F. [L. S.]

P. D. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

1. The word *respondentia* properly applies only to a loan of money secured upon the merchandise laden, or to be laden on board a ship, repayment thereof with maritime interest, being made contingent on the arrival of the cargo at the port of destination. The money raised upon it is for the purpose of the cargo only. (Macl. Ship., 2d ed., 48.) See, also, note 1 to last form, No. 286.

No. 288.

Bond, with condition to maintain a person during life.

As in form No. 278 to (†) and from thence as follows: The condition of this obligation is such that whereas the above bounden A. B., for and in consideration of a competent sum of money to him in hand paid by the above-named C. D., hath agreed and undertaken to keep and maintain the said C. D. during his life; if, therefore, the said A. B., his executors or administrators, do, and shall from time to time and at all times hereafter during the natural life of the said C. D., well and sufficiently maintain and keep, or cause to be well and sufficiently maintained and kept, the said C. D., in the house of him, the said A. B., with meat, drink, clothes, and all other things necessary and convenient, then, etc., or else, etc.¹

A. B. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

1. See *Stewart v. Cuyler* (17 Barb. Hun, 251); *Cornell v. Cornell* (96 N. 482); *Hawley v. Morton* (23 id. 255); *Y. 108*), as to construction of such Exrs. of *Schoonmaker v. Elmen-* an agreement. See, also, note 1 to *dorf* (10 Johns. 49); *Loomis v. Loomis* form No. 278, as to bonds generally. (35 Barb. 624); *Bennett v. Akin* (38

No. 289.

Bond with condition to procure an heir, etc., to convey when of age, and for quiet enjoyment.

As in form No. 278, to (†) and from thence as follows:

Whereas, the above-bound I. K., by indenture of bargain and sale (or, as the case may be), bearing even date herewith, and made between her, the said I. K., by the name of, etc., widow and relict of R. K., late of, etc., her late husband, deceased, of the one part, and the above-named R. H., by the name of R. H., etc., of the other part, for the consideration therein mentioned, hath granted, etc., unto the said R. H., etc., all that, etc., to hold the same premises unto, and to use of the said R. H., his heirs and assigns, forever.

Now the condition of the above obligation is such that if E. K., the only child of R. K. (or, heir-at-law, etc., as the case may be), being now an infant of the age of — years, or thereabouts, at any time or times, after she, the said E. K., shall have attained the age of twenty-one years, if then sole and unmarried, and if then married, the said E. K., and her husband, do and shall, at the request, costs and charges, of the said R. H., his heirs or assigns, duly execute all and every further conveyance and assurance, or do, commit and suffer, any and every act, deed, matter, or thing necessary for the full, complete and absolute conveyance, confirmation and assurance of the said messuages, hereditaments and premises, etc., and every part thereof, unto and to the use of the said R. H., his heirs and assigns, discharged of all prior grants, charges and incumbrances, by the said E. K., or her said husband, done, committed, or suffered; and if the said R. H., his heirs and assigns, shall and may, at all times hereafter, peaceably and quietly, have, hold and enjoy all and singular, the said hereditaments and premises, and receive and take the rents, issues and profits thereof, to his and their own use, without any let, suit, interruption, claim or demand, of the said E. K., or any issue of her body, or any other person or persons having, or lawfully claiming, any estate, right, title or interest of, in or to the said hereditaments and premises, or any part thereof, by, from or under her, the same E. K., or of the issue of her body, then, etc.¹

A. B. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment, etc., as in forms Nos. 6, etc.

1. See note 1 to form No. 278, as to bonds generally.

No. 290.

Bond with condition to marry a person or pay, etc.

As in form No. 278, to (†) and from thence as follows:

The condition of this obligation is such that if the above-bounden A. B. do, on or before the — day of —, next

ensuing the date of the above-written bond or obligation, espouse and lawfully marry C. D., daughter of, etc., if she, the said C. D., will thereunto consent, and the laws of this State permit the said marriage to be consummated. Or, if it shall happen that the said A. B. shall not marry and take to wife the said C. D., as aforesaid; if then the said A. B. shall well and truly pay, or cause to be paid, to the said C. D., her executors, administrators and assigns, the full sum of, etc., of lawful money of —, on or before the — day of, etc., above mentioned. Then, etc., otherwise, etc.¹

A. B. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

1. See note 1 to form No. 278, as to bonds generally.

No. 291.

Bond, with condition for performance of covenants.

As in form No. 278, to (†) and from thence as follows:

The condition of this obligation is such that if the above-bound A. B., his heirs, executors and administrators, do, and shall in all things, well and truly observe, perform, fulfill, accomplish, pay and keep, all and singular, the covenants, grants, articles, clauses, provisions, payments, conditions and agreements whatsoever, which, on the part and behalf of the said A. B., his heirs, executors and administrators, are, or ought to be, observed, performed, fulfilled, accomplished, paid and kept, comprised or mentioned in a certain indenture of, etc., bearing even date with the bond or obligation above written, and made or mentioned to be made between the said A. B., of the one part, and the above-named C. D., of the other part, according to the purport, true intent and meaning of the same, then, etc.¹

A. B. [L. S.]

Signed and sealed in presence of

G. H.

(Acknowledgment or proof, as in forms Nos. 6, etc.)

1. See note 1 to form No. 278, generally as to bonds.

No. 292.

Undertaking to procure discharge from arrest.

(N. Y. Code Civ. Proc., § 575, subd. 1.)

(Title of action.)

Whereas, C. D., the defendant above named, has been arrested by E. D., the sheriff of the county of —, under and by virtue of an order of arrest made in the above entitled action, by, etc., dated —, 1—:

Now, therefore, we, M. N., of, etc., merchant, and P. R., of, etc., banker, do hereby, jointly and severally, undertake, in the sum of — dollars, that the said defendant, C. D., will obey the direction of the court, or of an appellate court, contained in an order or a judgment, requiring him to perform the act specified in the said order of arrest; or in default of his so doing, that he will, at all times, render himself amenable to proceedings to punish him for the omission.

In witness whereof, we have hereunto set our hands, this — day of —, 1—.¹

M. N.

P. R.

(Acknowledgment as in form No. 89.)¹

1. The statute, section 576 of the New York Code of Civil Procedure, provides that it is not necessary that the undertaking should be approved, or accompanied with an affidavit of justification of the bail. But the officer, taking the acknowledgment of the undertaking, must, if the sheriff so requires, examine under oath, to a reasonable extent, the persons offering to become bail, concerning their property and their circumstances. The examination must be reduced to writing, subscribed by the bail, and annexed to the undertaking. See, also, *Toles v. Adey* (84 N. Y. 222); *Carr et al. v. Sterling* (114 id. 558, rev'g S. C., 21 J. & S. 255); *Harberstro v. Bedford* (118 id. 187).

No. 293.

Bond, with condition for jail limits.

As in form No. 284, to (†) and from thence, as follows:

Whereas, the above bounden A. B. is now in custody of the above-named sheriff, A. M., by virtue of a writ of execution against the person of the said A. B., issued out of the Su-

preme Court of Judicature of the State of (New York) (or out of the County Court (or, Court of Common Pleas) in and for the county of —, at the suit of G. H. against the said A. B., indorsed for the sum of — dollars, tested the — day of —, —, (or, instant):

Now, therefore, the condition of this obligation is such, that if the above bounden A. B., so in custody of the above-named sheriff as aforesaid, shall remain a true and faithful prisoner, and shall not at any time or in any manner escape or go without the limits and boundaries of the liberties established for the jail of the county of —, until discharged by due course of law, then this obligation to be void, otherwise to remain in full force and virtue.

A. B. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

Sealed and delivered in presence of¹

G. H.

1. See note 1 to form No. 278, generally as to bonds.

No. 294.

Auctioneer's bond.

See form No. 263.

No. 295.

Penal bill.

Know all men by these presents, that I, C. D., do owe unto E. F. the sum of — dollars, to be paid to the said E. F., his executors, administrators or assigns, with interest, on or before the — next; for the which payment well and truly to be made I bind myself, my heirs, executors and administrators, in the penal sum of — dollars, firmly by these presents.

In witness, etc., sealed, etc.¹

C. D. [L. S.]

(Acknowledgment, etc., as in forms Nos. 6, etc.)

1. See note 1 to form No. 278, as to bonds generally.

No. 296.

Single bill.

Know all men by these presents, that I, C. D., do owe and am indebted to E. F. the sum of — dollars to be paid to the said E. F., his executors, administrators or assigns, with interest on or before, etc.

In witness, etc. (as in form No. 30).¹

C. D. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

1. See note 1 to form No. 278, generally as to bonds.

No. 297.

Bond by legatee to executor, when legacy is to be paid within one year, etc.

Know all men by these presents, that we, A. B., of the town of —, in the county of —, and State of New York, as principal, and C. D. and E. F., both of the town of —, in the county of —, and State aforesaid, as sureties, are held and firmly bound unto G. H., executor of the last will and testament of I. K., late of the town of —, in the county of —, and State aforesaid, deceased, in the penal sum of — (this blank should be filled with a sum double the amount of the payment made) dollars to be paid to the said G. H., as such executor as aforesaid, or to his attorney, successors or assigns. For which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this — day of —, one thousand — hundred and —.

Whereas, by the said last will and testament of the said G. H., deceased, a legacy of — dollars is directed to be paid to the said A. B. (here state the time when the legacy is directed to be paid). And whereas, letters testamentary upon said will were granted by the surrogate of the county of —, to the said G. H., on the — day of —, one thousand eight hundred and —, being less than one year preceding this date. And whereas, the said G. H., as such executor

as aforesaid, upon the demand and at the request of the said A. B., has paid to him the whole amount of said legacy (or, — dollars, being a portion of said legacy):

Now, therefore, the condition of this obligation is such that if in case any debts against the said deceased shall duly appear, and which there shall be no other assets to pay, or in case there shall be no other assets to pay other legacies or not sufficient, that then the said A. B. shall refund the amount so as aforesaid paid to him by the said G. H., or such ratable proportion thereof with the other legatees, as may be necessary for the payment of the said debts and the proportional parts of such other legacies, if there be any, and the costs and charges incurred by reason of the payment to the said A. B., as aforesaid. And if in case the probate of said will under which such payment was made shall be revoked, or said will declared void, the said A. B. shall refund the whole amount so as aforesaid paid to him by the said G. H., as such executor as aforesaid, with interest to the executor or administrator entitled thereto, then the above obligation to be void; otherwise to remain in full force and virtue.¹

A. B. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

Sealed and delivered in the presence of

G. H.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

1. See note 1 to form No. 278, generally as to bonds, and see section 2719 of New York Code of Civil Procedure, as to compelling executor to pay legacy within a year from the granting of letters. And for bond to be given upon such application, see Lansing's Forms of Civil Procedure, v. 2, p. 1319, form No. 1473.

No. 298.

The like upon bringing a suit for a legacy.

Know all men by these presents, that we, A. B., of the town of —, in the county of —, and State of New York, as principal, and C. D. and E. F., both of the town of —, in the county of —, and State aforesaid, as sureties, are held and firmly bound unto G. H., executor of the will of I. K., deceased, in the penal sum of (the penalty must be double the

amount of the legacy) — dollars, to be paid to the said G. H., as such executor as aforesaid, or to his certain attorneys, successors or assigns. For which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly, by these presents.

Sealed with our seals and dated the — day of —, one thousand — hundred and —.

Whereas, the said A. B. is about to commence a suit in the Supreme Court of Judicature of the State of New York (or, such other court as the fact may be) against the said G. H. as such executor as aforesaid, for the purpose of recovering the amount of a certain legacy of — dollars, bequeathed to him in and by the last will and testament of the said I. K., deceased :

Now, therefore, the condition of this obligation is such that if in case any debts owing by said testator shall hereafter be recovered, or duly made to appear, for the payment of which there shall be no assets other than the said legacy, and the said A. B. shall refund the said legacy in case the same shall be recovered by him in such action, or such ratable part or proportion thereof, with the other legatees and representatives of the deceased, as may be necessary for the payment of the said debts, and the costs and charges incurred by a recovery against such executor in any suit therefor.

And, also, in case no sufficient assets shall remain after the payment of said legacy to pay any other legacy which may be due, and the said A. B. shall refund such ratable part or proportion of the legacy which shall be recovered by him, with the other legatees or other representatives of the deceased, as may be necessary, for the payment of the proportional part of such other legacy, then this obligation to be void ; otherwise to remain in full force and virtue.¹

A. B. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

Sealed and delivered in the presence of

G. H.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

1. See note 1 to form No. 278, as State by section 1819 of the Code of to bonds generally. In New York Civil Procedure, if, after the expira-

tion of one year from the granting of letters testamentary, or letters of administration, an executor or administrator refuses, upon demand, to pay a legacy or distributive share, the person entitled thereto may maintain such an action against him as the case requires. A bond is required in the case of an action brought by a minor, to be given to the minor by his guardian *ad litem*, for form of which see next form, No. 299.

No. 299.

The like by a minor.

Know all men by these presents, that we, A. B., of the town of —, in the county of —, and State of New York, as principal, and C. D. and E. F., both of the town of —, in the county of —, and State aforesaid, as sureties, are held and firmly bound unto G. H., an infant under the age of twenty-one years, of the town of —, in the county of —, and State aforesaid, in the penal sum of — dollars, to be paid to the said G. H., or to his certain attorney, executors, administrators or assigns. For which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals and dated the — day of —, one thousand — hundred and —. (*)

Whereas, the above-named A. B., as the guardian *ad litem* (or, next friend) of the above-named G. H., is about to institute a suit or action in the Supreme Court of Judicature of the State of New York (or, other court, as the case may be), against I. K., executor (or, administrator, as the case may be) of, etc., of L. M., deceased, to recover a certain legacy bequeathed by the said L. M., in and by his said will, to the said G. H. (or, to recover the distributive share to which the said G. H. is entitled as one of the next of kin of the said L. M., deceased, as the case may be):

Now, therefore, the condition of this obligation is such that if the above bounden A. B., as such guardian (or next friend) as aforesaid, shall duly account to the said G. H. when he arrives at the age of twenty-one years, or to his personal representatives in case of his death, for all moneys or prop-

erty, which said guardian may receive by reason of such legacy (or, distributive share), then this obligation to be void ; otherwise to remain in full force and virtue.¹

A. B. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

Sealed and delivered in the presence of

G. H.

(Acknowledgment or proof as in forms Nos. 89, affidavits of justification and approval substantially as in form No. 302.)

1. See note 1 to last form No. 298; see, also, note 1 to form No. 278, as to bonds generally.

No. 300.

Bond of a general guardian.

Know all men by these presents, that we, A. B., of the town of —, in the county of —, and State of New York, as principal, and C. D. and E. F., both of the town of —, in the county of —, and State aforesaid, as sureties, are held and firmly bound unto G. H., of the town of —, in the county of —, and State aforesaid, an infant under the age of twenty-one years, in the penal sum of — dollars, to be paid to the said G. H., or to his certain attorney, executors, administrators or assigns. For which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the — day of —, one thousand — hundred and —.

Whereas, the above bounden, A. B., has applied to the Surrogate's Court of the county of —, to be appointed the general guardian of G. H., the infant above named, and by a decree of said court made on the — day of —, 1—, said A. B. was appointed such guardian on his executing and filing his bond as such guardian, with the sureties and upon the condition and in the penalty as mentioned by said decree :

Now, therefore, the condition of this obligation is such that in case the said A. B., having been appointed such general guardian as aforesaid, shall faithfully in all things dis-

charge the duty of such guardian to such minor according to law, and shall render a just and true account of all moneys and property which shall be received by him as such guardian, and of the application thereof, and of his guardianship in all respects to any court having cognizance thereof, when thereunto required, then this obligation to be void, otherwise to remain in full force and virtue.¹

A. B. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

Sealed and delivered in the presence of

G. H.

(Acknowledgment, etc., as in form No. 6, etc., affidavits and approval by surrogate, as in form No. 302.)

1. See generally as to bonds, note see section 2830 of New York Code
1 to form No. 278; as to general of Civil Procedure.
guardian's bond in New York State,

No. 301.

Arbitration bond, general form of.

Know all men by these presents, that I, A. B., of, etc., am held and firmly bound unto G. H., of, etc. (or, that I, G. H., of, etc., am held and firmly bound unto A. B., of, etc.),¹ in the sum of — dollars, lawful money of the United States of America, to be paid unto the said G. H., his executors, administrators or assigns; for which payment well and truly to be made, I bind myself, my heirs, executors and administrators, firmly by these presents.

Sealed with my seal, and dated the — day of —, in the year 1—.

The condition of this obligation is such (*) that if the above-bounden A. B. shall well and truly submit to the decision of M. N., etc. (naming arbitrators), selected and chosen arbitrators as well by and on the part and behalf of the said A. B., as of the said G. H., between whom a controversy exists, to hear all the proofs and allegations of the parties, of and concerning (state matters in controversy), and all matters relative thereto (with power to award the payment of costs and expenses of

such arbitration). But before proceeding to take any testimony therein, the said arbitrators shall be sworn "faithfully and fairly to hear and examine the matters in controversy between the parties to these presents, and to make a just award according to the best of their understanding," so as the award of the said arbitrators shall be made in writing, subscribed by them or any two of them, and duly acknowledged or proved and certified in like manner as a deed, to be recorded and ready to be delivered to the said parties (or, filed in the — clerk's office, or, delivered to one of said parties or his attorney),² on or before the — day of —, 1 — (and if they should not make their award in writing on or before the day aforesaid, then, if the said A. B., his heirs, etc., do and shall well and truly perform and keep the award and umpirage of such person as the said arbitrators shall choose for umpire, so as that the said umpire shall make his umpirage in writing, subscribed by him, and ready to be delivered to the parties aforesaid, on or before the — day of — following), then the above obligation to be void.

And it is hereby mutually agreed, by and between the parties to these presents, that judgment shall be rendered upon the award which may be made pursuant to this submission, in the (Supreme Court, in the county of —),³ to the end that all matters in controversy in that behalf, between the said parties, shall be finally concluded, pursuant to the provisions of the statute for determining controversies by arbitration, to-wit, of (title 8 of chapter 17 of the Code of Civil Procedure of the State of New York).

A. B. [L. S.]

Sealed and delivered in the presence of

A. B.

(Acknowledgment, as in form No. 89, or proof as in form No. 89.)

- | | |
|---|---|
| <p>1. A bond is given by each of the parties to the arbitration to the other.</p> <p>2. See section 2372 of New York Code of Civil Procedure.</p> | <p>3. The county need only be named in case the judgment is to be entered in the Supreme Court.</p> |
|---|---|

No. 302.**Bond of executor or administrator.**

Know all men by these presents, that we, A. B., of, etc., merchant, C. D., of, etc., banker, and E. F., of, etc., merchant, are held and firmly bound unto the people of the State of New York in the sum of — dollars, to be paid unto the said people, or to their certain attorney, successors and assigns, for which payment, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, this — day of —, 1—.

The condition of this obligation is such (*) that if the above bounden A. B. shall faithfully discharge the trust reposed in him as executor of the will of M. N. (or, as administrator of all and singular the goods, chattels and credits of M. N.), late of the (city) of —, deceased, and shall obey all lawful decrees and orders of the Surrogate's Court of the county of —, touching the administration of the estate committed to him as such executor or administrator, then the preceding obligation to be void, otherwise to remain in full force and virtue.

A. B. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment, etc., as in forms Nos. 89, etc.; justification of sureties, as in form No. 220,)

I hereby approve of the foregoing bond, as to its form and manner of execution, and as to the sureties therein mentioned.

Dated —, 1—.

A. O.,

Surrogate of — county.

No. 303.**Bond of guardian ad litem in partition suit.**

As in form No. 302, to (*) and from thence as follows: That if the above bounden A. B. shall faithfully discharge the trust committed to him as guardian of the infant defend-

ant C. H., in an action for partition in the — Court, in which M. C. is plaintiff, and P. R. and others are defendants, and shall render a just and true account of his guardianship in any court or place when thereunto required, then this obligation to be void, otherwise to be and remain in full force and virtue.

A. B. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

Sealed and delivered in presence of

J. K.

(Acknowledgment or proof as in form No. 89; affidavits and approval as in last form, No. 302.)

1. By section 1536 of New York is to be executed by one or more Code of Civil Procedure, the bond sureties to the people of the State.

No. 304.

Bond of guardian ad litem in suit brought for a legacy.

Same as in form No. 299.

No. 305.

Bond of receiver.

As in form No. 302, to (*) and from thence as follows: Whereas, by an order of the — Court, of, etc., made at, etc., bearing date —, 1—, in an action wherein M. B. was plaintiff, and C. R. and others were defendants, the above bounden A. B. was appointed receiver of all the partnership property of the late firm of M. B. & Co. (or, otherwise describing property):

Now, therefore, the condition of this obligation is such, that if the above bounden A. B. shall faithfully discharge his duties as such receiver, then this obligation shall be void, otherwise to be and remain in full force and virtue.

A. B. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment, etc., substantially as in form No. 89.)

No. 306.**Bond by guardian before receiving property.**

As in form No. 302, to (*) and from thence as follows :

The condition of this obligation is such, that, whereas, the said A. B. has been appointed as guardian *ad litem* of the said C. D., an infant defendant in an action now pending in the — Court, between M. N., plaintiff, and said C. D. and others, defendants ; and, whereas, the said A. B. is about to receive, as such guardian, money to the amount of — dollars (or, property to the value of — dollars) :

Now, therefore, if the said A. B. shall duly account for and apply the said money (or, property) when received by him, under the direction of the court, then this obligation to be void, otherwise to be and remain in full force and virtue.¹

A. B. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

Sealed and delivered in presence of

M. B.

(Acknowledgment, etc., as in form No. 89 ; justification by sureties and approval substantially as in form No. 302.)

1. See New York Code of Civil to form No. 278, as to bonds generally. See, also, note 1

No. 307.**Bond in action or special proceeding, general form.**

As in form No. 302, to (*) and from thence as follows :

The condition of this obligation is such, that if the above bounden, A. B., his heirs, etc., shall and do well and truly (insert condition of bond), then the preceding obligation to be void, otherwise to remain in full force and virtue.¹

A. B. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment, etc. as in form No. 89 ; justification by sureties and approval, substantially as in form No. 302.)

1. See sections 810-812 of New York Code of Civil Procedure, and see note 1 to form No. 278, generally, as to bonds.

No. 308.

Bond of assignee for creditors.

As in form No. 302, to (*) and from thence as follows:

The condition of this obligation is such, that, whereas, the above bounden A. B. was, by an assignment, made to him by C. D. of said city, made assignee for the creditors of said C. D., and duly accepted said assignment and assented thereto:

Now, therefore, the condition of this obligation is such, that if the said A. B. shall faithfully discharge his duties as such assignee, and shall duly account for all moneys received by him, without fraud or delay, then the preceding obligation to be void, otherwise to remain in full force and virtue.¹

A. B. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

Sealed and delivered in presence of

M. N.

(Acknowledgment, etc., as in form No. 89; affidavit by sureties and approval by county judge, etc., substantially as in form No. 302.)

1. See section 5 of chapter 466 (page 544) of Laws of New York of 1877, as to this bond, and see note 1 to form No. 278, as to bonds generally.

The assignment is not rendered void by the fact that the bond of the assignee is not approved by the county judge, as required by the act of 1860 (chap. 348, Laws of 1860). The giving of the bond is not a prerequisite to the validity of the assignment, and if the former, when given, is irregular and void, it does not affect the validity of the latter. (*Thrasher v. Bentley*, 59 N. Y. 649; *Brennan v. Willson*, 71 id. 502.)

An assignee, however, has no power to act in execution of the trust, without giving a bond with sureties as required. Until this is done his trust is simply to take possession of and hold the property. (*Brennan v. Willson*, *supra*.)

A special county judge, elected under and by virtue of legislative authority, with power to perform the duties of the county judge, has the power to approve such bond. (*Thrasher v. Bentley*, *supra*.)

See, also, *Van Slyke v. Bush* (123 N. Y. 47; S. C., 33 State Rep. 65); *Israel v. Jordan* (12 Misc. 552); *Pierpont v. McGuire* (13 id. 70), as to liability of sureties.

No. 309.

Undertaking of commissioner of highways.

Whereas, M. N., of, etc., has been duly elected (or, appointed) a commissioner of highways of the said town of —, in the county of —, to serve for the period of one year (or, until the — day of — next), and until a successor shall have been elected (or, appointed) in his place :

Now, therefore, we, M. N. and E. D., of the said town of —, do hereby undertake pursuant to statute, in the sum of — dollars, that the said M. N. will faithfully discharge his duties as such commissioner of highways in and for said town, and, within ten days after the expiration of his term of office, will pay over to his successor in office all moneys remaining in his hands as such commissioner, and render to such successor a true account of all moneys received and paid out by him as such commissioner.¹

In witness whereof, etc. (as in form No. 181).

In presence of

M. H.

M. N.

E. D.

R. F.

(Acknowledgment, etc., as in form No. 89).

Indorsed.

I hereby approve of the within undertaking, as to the form and sufficiency thereof.

—, 1—.

F. P.,

Supervisor of the town of —.

1. See section 63 of chapter 569 of the Laws of New York of 1890, as to this undertaking, which is to be delivered within ten days thereafter.

No. 310.

Bond of new trustee appointed in the place of deceased trustee of express trust.

As in form No. 302 to (*), and from thence as follows:

The condition of the above obligation is such, that if the above-bounden J. F. shall and do well and faithfully execute the trusts created by a certain trust deed, dated —, 1—,

executed by (**) J. M., of — (and C. M., his wife) to P. J., of —, under the direction of this court, for which purpose he has been duly appointed by an order of this court, made and entered on the — day of —, 1—, in the matter of, etc. (insert title of proceeding), and shall observe all such orders as shall be made by this court in relation to said trust, then the preceding obligation to be void, otherwise to remain in full force and virtue.¹

A. B. [L. S.]

C. D. [L. S.]

[E. F.] [L. S.]

Sealed and delivered in presence of

M. R.

(Acknowledgment, etc., as in form No. 89; affidavits of sureties and approval substantially as in form No. 302.)

1. See, as to action on this bond, see note 1 to form No. 278 as to *People v. Nestor* (9 N. Y. 176); and bonds generally.

No. 311.

Bond of trustee appointed in place of one whose resignation has been accepted.

As in last form No. 310, to (**), and from thence as follows: By M. N. (and P. N., his wife), to F. E., as trustee thereunder, to which position (or, for which purpose) he has been appointed by order of this court, made and entered on the — day of —, 1—, in place and stead of (said E. F.), who has resigned as such trustee, and shall observe all such orders as shall be made by this court in relation to the said trust, then the preceding obligation to be void, otherwise to be and remain in full force and virtue.¹

(Signatures, etc., as in form No. 310.)

Sealed and delivered in presence of

E. M.

(Acknowledgment, etc., as in form No. 310.)

1. See note to last form, No. 310, and the note therein referred to.

No. 312.

Bond of auctioneer on his appointment.

See form No. 263.

No. 313.

Sheriff's bond.

Know all men by these presents, that we, A. B., of, etc., C. D., of, etc., and E. F., of, etc., are held and firmly bound unto (*) the people of the State of (New York) in the penal sum of (ten) thousand dollars; for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the — day of (January) in the year 1—, (**).

Whereas, the above-bounden A. B. has been elected to the office of sheriff of the county of —, at the general (or, at a special) election held therein on the — day of —, 1—, (or, has been appointed by the governor of the State of New York to execute the duties of the office of sheriff of the county of —, during the vacancy therein caused by the death (or, resignation; or, removal from office) of —, late sheriff of said county; or, was duly elected sheriff of the county of — at the general (or, a special) election held therein on the — day of —, 1— and whereas, the said A. B. did duly enter upon the duties of the said office, and has continued in said office until this time, and now is the sheriff of said county):

Now, therefore, the condition of the above obligation is such, that if the said A. B. shall well and faithfully, in all things, perform and execute the office of sheriff of the said county of — during his continuance in the said office by virtue of the said election (or, appointment), without fraud, deceit or oppression, then the above obligation to be void, or else to remain in full force.¹

A. B. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

(Acknowledgment as in forms Nos. 89, etc.)

1. See note 1 to form No. 278, as to bonds generally. cute bonds within twenty days after notice of election is directory

The provision of 1 N. Y. R. S. merely, and omission to comply with 378, § 67, requiring sheriffs to execute it works no forfeiture of the office,

provided the bond is filed within fifteen days after commencement of the term. (*People v. Holley*, 12 Wend. 481.)

If a sheriff, required by statute (1 N. Y. R. S. 379, § 70) to renew his bond every year within twenty days after the first Monday of January, the office to become vacant upon his fail-

ure to do so, files his bond within a reasonable time thereafter and before notice to or action by the governor, there is no vacancy in his office, and his laches are remedied. (1855, *Opinions of Attys.-Gen'l.*, 233.)

See, generally, as to bonds of sheriffs, form of, filing, etc., 1 N. Y. R. S. 378, § 67, *et seq.* Also see *Undertakings*.

No. 314.

Bond of deputy sheriff.

As in last form, No. 313, to (*), and from thence as follows: M. N., sheriff of the county of —, in the State of New York, in the sum of — thousand dollars, to be paid to the said M. N., or his certain attorney, executors, administrators or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed, etc. (as in form No. 313).

Whereas, the above-bounden — has been appointed to the office of under sheriff (or, deputy sheriff; or, deputy sheriff and jailer) of the said county of —, by the said M. N., as such sheriff:

Now the condition of this obligation is such, that if the above-bounden — shall well and faithfully execute and discharge the duties of the said office of (under sheriff) during his continuance therein, without any deceit, fraud, delay, neglect or oppression, and shall save harmless and indemnify the said M. N., his executors and administrators, from and against all acts or doings, or neglect of duty of him, the said —, as such (under sheriff), and pay off and discharge and save him harmless of and from all judgments, penalties, fines, costs, charges and damages in any action or proceeding that may be brought against the said M. N., as such sheriff, by reason of any act or omission done, committed or suffered by the said — as such (under sheriff); and shall likewise pay and discharge and save the said M. N. harmless from any costs and expenses he may incur or be put to in defending any action or proceeding commenced against him as

such sheriff by reason of any acts or doings, or neglect of duty of him, the said —, whether such action or proceeding is rightfully brought against the said M. N., as such sheriff, or not; and shall pay to the said M. N., as such sheriff, his proportion of the legal fees received by him, the said —, at any time, as such (under sheriff) as aforesaid; and also that if the said — shall, at the termination of his appointment as such (under sheriff), account to and with the said A. B., his representatives, assigns' or duly authorized agent, for all moneys collected or received by him as such (under sheriff) as aforesaid, including all legal fees for services as such (under sheriff), and pay over all moneys collected by him as aforesaid and remaining in his hands, as well as the portion or share of the legal fees received by him, the said —, as such (under sheriff) as aforesaid, to which the said A. B. is entitled, then this obligation to be void, otherwise to remain in full force and virtue.¹

[L. S.]

[L. S.]

[L. S.]

Signed, sealed and delivered in the presence of

G. H.

(Acknowledgment or proof as in forms Nos. 6, etc.)

1. The sureties on the bond of a day of its date is destroyed by proof deputy sheriff for the faithful discharge of his duties, are bound only of the time of its actual delivery. (Reilly v. Dodge, 42 Hun, 646) See, for acts done after its delivery. The also, as to bonds generally, note 1 to presumption of its delivery upon the form No. 278.

No. 315.

Bond to a town for support of a child.

Know all men by these presents, that we, A. B. and F. G., of the town of —, in the county of —, and State of —, are held and firmly bound unto L. M. and N. O., overseers of the poor of the said town for the time being, in the just and full sum of three hundred dollars, to be paid to the said overseers of the poor, or to either of them or either of their successors or assigns; to which payment well and truly to be

made we bind ourselves, jointly and severally, our heirs, executors and administrators and every of them firmly by these presents.

Sealed with our seals, dated the first day of May in the year of our Lord one thousand — hundred and —.

The condition of this obligation is such, that whereas, M. W., of the said town, single woman, is now pregnant with a bastard child (or, has lately been delivered of a male bastard child in the township aforesaid), and has charged the said A. B. with being the father of the said child, if therefore the said A. B. shall and do from time to time, and at all times hereafter, well and sufficiently save, keep harmless and indemnify the said town of —, and also all the inhabitants of the said town, of and from all expenses, costs and damages whatsoever, which shall or may hereafter happen or accrue for or by reason of the birth, maintenance, education or bringing up of the said child (or, of such child or children wherewith the said M. W. now goes), and of and from all actions, troubles and demands touching or concerning the same, then this obligation shall be void; otherwise it shall be and remain in full force and virtue.

A. B. [L. S.]

F. G. [L. S.]

Sealed and delivered in presence of

G. H.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

No. 316.

Bond of a treasurer of a corporation.

As in form No. 280, to (†) and from thence as follows: Whereas, the above-bounden A. B. has been chosen treasurer of the (naming corporation), by reason whereof he will receive into his hands divers sums of money, goods and chattels, and other things, the property of the said corporation:

Now the condition of this obligation is such, that if the said A. B., his executors or administrators, at the expiration of his said office, upon request to him or them to be made, shall make and give unto such auditor or auditors as shall be

appointed by the said corporation, a just and true account of all such sum or sums of money, goods, chattels, and other things, as have come into his hands, charge or possession as treasurer aforesaid; and shall and do pay and deliver over to his successor in office, or any other person duly authorized to receive the same, all such balances or sums of money, goods and chattels and other things, which shall appear to be in his hands, and due by him to the said company, then this obligation to be void or else to be and remain in full force and virtue.

A. B. [L. S.]

Sealed and delivered in presence of

E. F.

Acknowledgment, etc., as in forms Nos. 6, etc.)

1. See note 1 to form No. 278, as to bonds generally.

No. 317.

Bond with warrant of attorney to confess judgment.

As in form No. 278, to (†) and from thence as follows:

The condition of this obligation is such, that if the above-bounden A. B., his heirs, executors, administrators, or any of them, shall and do, well and truly pay, or cause to be paid, unto the above-named C. D., his executors, administrators or assigns, the just and full sum of — dollars, with legal interest for the same, on or before the — day of —, 1—, then this obligation to be void and of no effect, or else to be and remain in full force and virtue.

A. B. [L. S.]

Sealed and delivered in presence of

E. F.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

To Y. Z., esquire, attorney of the court of —, in the State of —, or to any other attorney of the said court, or of any other court elsewhere:

Whereas, I, A. B., of —, by a certain obligation bearing even date herewith, do stand bound unto C. D., of —, in the sum of — (penalty), conditioned for the payment of

— (real debt), these are to desire and authorize you, or any of you, on the request of said C. D., to appear for me, my executors or administrators, in the said court, or elsewhere, in an action (of debt) there or elsewhere brought, or to be brought against me, my executors or administrators, at the suit of the said C. D., his executors, administrators or assigns, on the said obligation, as of any term, the present, or any other subsequent term of the said court, or any other court there or elsewhere to be held, and confess judgment thereupon against me, my executors or administrators, for the said sum of — (penalty) debt, besides costs of suit, by (non sum informatus, nihil dicit), or otherwise as to you shall seem meet; and for your, or any of your, so doing, this shall be your sufficient warrant. And I do hereby for myself, my executors and administrators, remise, release and forever quit-claim unto the said C. D., his executors, administrators and assigns, all and all manner of error and errors, defects and imperfections whatever in the entering of the said judgment, or any process or proceedings thereon or thereto, or in any wise touching or concerning the same.

In witness whereof, I have hereunto set my hand and seal the — day of —, 1—.

A. B. [L. S.]

Sealed and delivered in presence of

O. P.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

No. 318.

Bond of railroad corporation.

(Name of corporation.)

No. —. This is to certify that the (name of corporation) has received the sum of — dollars from A. B., and, in consideration thereof, doth hereby promise and agree to pay to him, or to the bearer (or to his assigns), the said sum of — dollars, on the — day of —, in the year 1—, and also interest thereupon at the rate of — per centum per annum, payable on the — day of every — and — ensuing the date hereof, until said principal sum shall be paid, upon presentation of the annexed interest warrants, as they sever-

ally become payable at (the office of said corporation in the city of —, in the State of —).

In witness whereof, the said (name corporation) has caused its president and its treasurer, etc., to sign this obligation and to affix thereto the corporate seal of said corporation, on this — day of —, in the year 1—.

| | | |
|---------------------------|---------------------------|------------|
| (Seal.) | (Signature of president), | |
| (Signature of treasurer), | | President. |
| | Treasurer. | |

No. 319.

Bond of railroad corporation secured by mortgage.

No. —.

Know all men by these presents, that the (insert name of corporation) hereby acknowledges itself to be indebted to (naming trustees) or bearer, in the sum of — dollars, lawful money of the United States of America, which sum it promises to pay at, etc., on (or, before) the — day of —, in the year 1—, with the interest thereupon at the rate of — per centum per annum, payable semi-annually at, etc., on the — day of — and — in each year, until said principal sum is paid. This bond is one of a series of bonds, all of like tenor and date herewith, and numbered from one to —, consecutively, given by the said (name of corporation) to (stating purpose for which they are given).

The holder hereof is entitled to the security of a certain mortgage, bearing even date with said bonds, which said mortgage is made, executed and delivered by the said (name of corporation) to the said (naming trustees) as trustees in fact, to secure the payment of the principal and interest of said bonds; which said mortgage embraces (here designate property, substantially as in mortgage), which said property is more particularly described in said mortgage, and in the schedule thereunto annexed.

In witness, etc., (as in last form.)

(Signatures and titles of officers executing.)

(Seal of corporation.)

Sealed and delivered in presence of

M. H.

The foregoing bond is one of a series of bonds referred to in a certain mortgage of even date herewith, executed to the undersigned as trustees in fact, as stated in the foregoing obligation, to secure the payment of the principal and interest of certain bonds, numbered from one to —.

Dated —, 1—.

A. B.

C. D.

E. F.

Trustees.

No. 320.

Coupon to be annexed to bonds (forms Nos. 318, 319).

No. —.

\$— —

The (name of corporation) promises to pay to the bearer — dollars, semi-annual interest due upon its bond No. —, on presentation at the office of said corporation, No. —, in the city of —.

(Signature of officer.)

CHAPTER XIII.

Forms of Charter-Party.

No. 321. Charter-party.

322. Charter-party; another form.

No. 321.**Charter-party.**

This charter-party, made and concluded on the — day of —, in the year 1 —, between A. E. B., owner of the schooner J. H., of P., of the burden of — tons, or thereabouts, now lying in the port of (New York), of the first part, and I. & B., of the second part, witnesseth:

That the said party of the first part, for and in consideration of the covenants and agreements hereinafter contained, on the part of the said party of the second part to be kept and performed, doth hereby covenant and agree to charter the said vessel unto the said party of the second part, for a voyage from the port of N., to L. and return to N., upon the following terms, viz.:

First. The said party of the first part engages that the said vessel, in and during the said voyage, shall be kept tight, staunch, well fitted, tackled and provided with men, provisions and every requisite for such voyage.

Second. The said party of the first part further engages that the whole of the said vessel (with the exception of the cabin, the deck and the necessary room for the accommodation of the crew, and the stowage of the sails, cables and provisions) shall be at the sole use and disposal of the said party of the second part during the said voyage, and that no goods or merchandise whatever shall be laden on board, otherwise than from the said party of the second part, or his agent, without his consent, under penalty of the forfeiture of the amount of freight agreed upon for the same.

Third. The said party of the first part agrees to take on board said vessel, during the said voyage, all such lawful goods and merchandise as the said party of the second part, or his agents, may think proper to ship.

Fourth. The party of the first part agrees to proceed with all dispatch from N. direct to L., and return to N., and there discharge the cargo aforesaid. (Here insert any special covenants between the parties.)

And the said party of the second part agrees to pay to the said party of the first part, or his agent, for the charter or freight of the said vessel during said voyage, the sum of — dollars, payable upon the delivery of the cargo at N. (or, otherwise, according to the agreement of the parties). The party of the first part is to pay all the expenses of the vessel, including port charges and stevedore bills.

It is further agreed between the said parties, that said party of the second part shall be allowed for loading and discharging of the said vessel at the respective ports aforesaid, lay days as follows, that is to say : Dispatch loading and discharging at the port of L., and — running days at the port of —; and in case the said vessel is detained, the said party of the second part agrees to pay to the said party of the first part, demurrage at the rate of — dollars per day, day by day, for every day so detained, provided such detention shall happen by default of the said party of the second part, or his agent.

It is further understood and agreed, that the cargo or cargoes shall be received and delivered alongside of the vessel, within reach of her tackles, or according to the usages and customs at the ports of loading and discharging.

It is further agreed, that this charter shall commence when said vessel is ready to receive her cargo at her place of loading, and notice thereof has been given to the party of the second part, or to his agent, and terminate on the return of the vessel and the discharge of her cargo at the last port of delivery.

It is also further agreed, that the risks and responsibilities assumed by the party of the first part shall be solely and only those of his neglects or omissions, and of that of his ser-

vants. And that all and every other of the risks, hazards and contingencies of the elements and navigation, of all and every class, character and description, are assumed and to be borne by the party of the second part.

(Insert here any further special stipulations.)

And the said parties to the true performance of all and every of the foregoing covenants and agreements each to the other, do hereby bind themselves, their heirs, executors, administrators and assigns, especially the said party of the first part, the said vessel, her freight, tackle and appurtenances, and the said party of the second part, the merchandise to be taken on board, each to the other in the penal sum of — dollars.¹

In witness, etc. (as in form No. 163).

A. E. B. [L. S.]

H. B. [L. S.]

Sealed and delivered in presence of

C. B.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

1. A charter-party is a species of contract by which an owner of a vessel lets her to another person to be freighted by him. (*Spring v. Gray*, 6 Pet. 151.)

A charter-party made in good faith by the managing owners and ship's husband, is binding upon all the persons interested in the vessel. (*Bangs v. Lowber*, 2 Cliff. 157.)

In construing charter-parties it must be remembered that they are often informal instruments, having inaccurate clauses; and on this account they should be construed as liberally as mercantile contracts usually are, in furtherance of the real intention of the parties and usage of the trade. (*Raymond v. Tyson*, 17 How. 53.)

The owner of a vessel who offers her for charter is understood, unless the contrary is expressed, to warrant

her as seaworthy; and to undertake to keep her in repair, unless prevented by perils of the seas or unavoidable accident. He is not excused from liability for a defect because it was not known at the time of chartering. (*Work v. Leathers*, 97 U. S. 379, aff'g 1 Woods, 271.)

The presumption is that a defect developed without apparent cause in a vessel sailing under charter-party, existed when the service began, and therefore is within the owner's implied warranty of seaworthiness. (*Id.*)

The charterer of a vessel takes all risks as to delay from any unforeseen circumstances. (*The Thomas Jefferson*, 3 Ben. 302.)

Representations as to measurement are to be taken as merely descriptive, when the contract taken as a whole shows that the real consideration was the actual carrying ca-

capacity of the vessel. *Watts v. Camors* (10 Fed. Rep. 145. See, also, *Simonetti v. Foster* (2 id. 415); *Baker v. Ward* (3 Ben. 497); *Ruger v. Rech* (26 Int. Rev. Rec. 87); *Schmidt v. Smith* (7 Ben. 361); *Ashburner v. Balchen* (7 N. Y. 262).

A charter-party cannot, by its stipulations, limit or relieve the responsibilities of vessels or masters imposed by passenger laws of Congress. (*The Prinz Georg*, 23 Fed. Rep. 906.)

See, further, as to construction of different clauses contained in charter-parties, *Watts v. Camors* (115 U. S. 353); *Barrett v. Oregon Ry. and Nav. Co.* (22 Fed. Rep. 452); *Almgren v. Dutilh* (5 N. Y. 28); *Holmes v. Pavenstedt* (5 Sandf. 97); *McTaggart v. Henry* (3 E. D. Smith, 390); *Williams v. Johnson* (11 Barb. 501); *Field v. Chase* (Hill & D.

Supp. 50); *Renard v. Sampson* (12 N. Y. 561); *Hagar v. Clark* (78 id. 45); *Roberts v. Opdyke* (40 id. 259); *Nelson v. Rechnagle* (3 Bosw. 459); *Robbins v. Codman* (4 E. D. Smith, 315); *Rowe v. Smith* (10 Bosw. 268); *Ames v. Belden* (17 Barb. 513); *Nelson v. Odiorne* (45 N. Y. 489); *Sturgis v. N. J. Steamboat Co.* (62 id. 625); *Elwell v. Skiddy* (77 id. 282); *Funch v. Abenheim* (20 Hun. 1); *Stone v. Woodruff* (28 id. 534); *Ahrenberg v. Wright* (30 id. 75); *Roberts v. Societa Anonima* (53 N. Y. Super. Ct. [J. & S.] 424); *Baldwin v. Stamford Manfg. Co.* (16 N. Y. State Rep. 585); *Porteous v. Williams* (115 N. Y. 116); *Woolsey v. Funke* (121 id. 87; S. C., 30 N. Y. State Rep. 768); *Van Etten v. Norton* (29 id. 411; S. C., 8 N. Y. Supp. 478); *Russell v. Allerton* (29 N. Y. State Rep. 169; S. C., 8 N. Y. Supp. 688).

No. 322.

Charter-party; another form.

Memorandum of an agreement between I. N. L. and H. A. W. & Co., to-wit:

Said I. N. L. agrees to charter to H. A. W. & Co. the boat *Jeffersonian* now lying in Albany, for the sum of five hundred dollars, payable as follows: One hundred dollars June first; July first, one hundred dollars; September first, one hundred dollars; October first, one hundred dollars; December first, one hundred dollars, and to run and man said boat at one hundred and ten dollars per month, and ten cents per mile for towing day and night. Tolls on boat and horses to be paid by H. A. W. & Co. All other running expenses are included above. Said boat is to be kept in good running order free of expense to said W. & Co., and should she be lost, burned or otherwise disabled, said charter is to be paid for as *pro rata* for the whole season. Said charter

commences on the opening of canal navigation, 1—, and continues to its close.

In case said L. should sell said boat, he has liberty to transfer this charter to the new boat he may obtain in exchange.¹

—, — —, 1—.

I. N. L.

H. A. W. & Co.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

1. See note 1 to last form, No. 321.

Chattel Mortgages.

See MORTGAGES OF REAL AND PERSONAL PROPERTY.

CHAPTER XIV.

Forms of Condemnation of Real Property.

(N. Y. Code Civ. Proc., chap. 23, title 1.)

- No. 323. Petition for condemnation of real property.
- 324. Notice of presentation of above petition.
- 325. Order appointing guardian *ad litem* for infant, idiot, etc., defendant, in such proceeding.
- 326. Bond of guardian *ad litem* of infant, etc., in such proceeding.
- 327. Answer by owner of property to above petition.
- 328. Decision of court on trial of issues in such proceeding.
- 329. Order of reference in such proceeding.
- 330. Oath of referee in such proceeding.
- 331. Referee's report in such proceeding.
- 332. Notice of motion for judgment upon the report of referee in such proceeding, and for appointment of commissioners of appraisal.
- 333. Judgment after trial in such proceeding.
- 334. Judgment for plaintiff in case no answer is interposed to petition in such proceeding.
- 335. Subpoena issued by commissioners of appraisal in such proceeding.
- 336. Oath to be administered to witness by commissioners of appraisal in such proceeding.
- 337. Notice of meeting of commissioners in such proceeding.
- 338. Oath of commissioners in such proceeding.
- 339. Report of commissioners in such proceeding.
- 340. Notice of filing report of commissioners in such proceeding.
- 341. Order confirming or setting aside the report of commissioners in such proceeding.
- 342. Offer to purchase the property at a specified price, before service of petition and notice in such proceeding.
- 343. Acceptance of offer, form No. 342.
- 344. Order upon offer and acceptance in such proceeding.
- 345. Notice by plaintiff of abandonment of such proceeding.
- 346. Notice of appeal from final order in such proceeding.
- 347. Notice of appeal from judgment rendered in favor of defendant in such proceeding.
- 348. Notice of argument of appeal from final order confirming the report of commissioners in such proceeding.
- 349. Order upon appeal from final order in such proceeding, directing reappraisal by same or new commissioners.

- 350. Order affirming, reversing or modifying judgment on appeal therefrom in such proceeding.
- 351. Judgment of affirmance on appeal from judgment in such proceeding.
- 352. Affidavit on motion for permission to plaintiff to enter upon real property, in such proceeding.
- 353. Notice of motion for permission to plaintiff to enter upon real property in such proceeding.
- 354. Order permitting the plaintiff to enter upon the real property to be taken in such proceeding.
- 355. Notice of pendency of such proceeding.

No. 323.

Petition for condemnation of real property.

(N. Y. Code Civ. Proc., § 3360.)

(Folio 1.) SUPREME COURT, COUNTY OF —.

| | |
|---|---|
| <p>A. B. (or, The M. P. Company), plaintiff,</p> <p style="text-align: center;">against</p> <p>C. D., E. F., G. H., etc., defendants.</p> | } |
|---|---|

To the Supreme Court of the State of New York:¹

The petition of A. B. (or, of the M. P. Company), respectfully shows:

First. That your petitioner resides in the (city) of —, in the county of —, and State (aforesaid), and is engaged in the business of (stating same), [or, that your petitioner is *e. g.* a (domestic railroad corporation, duly incorporated under the provisions of an act of the legislature of (2) the State of (New York) entitled, "An act to authorize the formation of railroad corporations, and to regulate the same," passed April 2, 1850, and the several acts amendatory thereof and supplementary thereto; or, a joint-stock association, duly organized under the provisions of an act, etc., stating title and date of passage as above, and the acts amendatory thereof, etc. That the principal place of business of said corporation (or, association) within the State is the (city) of —, in the county of —, and the names and

(3) places of residence of its principal officers are as follows, viz.: C. F., its president, whose place of residence is the (city) of — (in the county of —); P. M., its secretary, whose place of residence is, etc. (stating same as above); R. P., its treasurer, etc. (stating names and places of residence of principal officers). That the names and places of residence of its directors (or, trustees; or, board of managers), are as follows (stating same in manner as above), and the object and purpose of its organization are *e. g.* to construct (4) and finish a railroad from and to the places named for that purpose in its articles of association, to-wit: (state the termini, as contained in the articles of incorporation)].²

Second. That the said A. B. (or, the said M. P. Company), desires to obtain the condemnation of the real property of which the following is a specific description, and location by metes and bounds, to-wit: All, etc. (describing property).

Third. That said property is required for [stating public use, *e. g.*, for the purpose of constructing and operating the (5) proposed road (here set forth facts showing the necessity of its acquisition for such use).]

Fourth. That the names and places of residence of the owners of said property are as follows: (stating same). That said E. F., etc. (naming infants) are infants, and that the name of the general guardian of said E. F., is C. R., and his residence in the (city) of —, in the county of — (or, that said E. F. has no general guardian, and that he resides with G. H., whose place of residence is the (city) of —, in the (6) county of —), [and so on, making similar statements as to each infant]. That said G. H. is a lunatic (or, idiot; or, habitual drunkard), and that the name and place of residence of his committee (or, trustee) is the (city) of —, in the county of — (or, that said G. H. has no committee or trustee, and that he resides with M. B., whose place of residence is the (city) of —, in the county of —), [and so on, making similar statements as to each lunatic, etc.]. That I. K. is not a resident of this State, but resides at the (city) (7) of —, in the county of —, and State of —, and that K. L. is the agent or attorney of the said I. K., and is authorized to contract for the sale of the said property.

That the place of residence of said L. M. cannot, after diligent inquiry, be ascertained; inquiry therefor having been made as follows: (stating, specifically, extent of inquiry).

Fifth. That the plaintiff, your petitioner, has been unable to agree with the owner (or, owners) of said property for its (8) purchase, and that the reason of such inability is as follows: (state same).

Sixth. That the value of said property to be condemned according to the best of your petitioner's knowledge, information and belief, is (stating value).

Seventh. That it is the intention of the plaintiff, your petitioner, in good faith to complete the work (or, improvement) for which the said property is to be condemned, to-wit: (state same, *e. g.* as follows, the construction and (9) completion of a railroad from and to the places named in its articles of association, viz., from — to —), and that all the preliminary steps required by law have been taken to entitle your petitioner to institute this proceeding.

Eighth. Your petitioner, therefore, demands as and for relief, that it may be adjudged that the public use requires the condemnation of the real property above described, and that the plaintiff, your petitioner, is entitled to take and hold (10) such property for the public use specified, upon making compensation therefor, and that commissioners of appraisal be appointed to ascertain the compensation to be made to the owners of the property so taken.

Dated —, 1—.

A. B.

(or, The M. P. Company, by F. R., its President.)

STATE OF NEW YORK, }
County of —, } ss.:

A. B. (or, F. R.), of —, being duly sworn, deposes and says, that he is the (president of the M. P. Company, the) petitioner named in the foregoing petition; that he has read the foregoing petition, by him subscribed, and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be al-

leged on information and belief, and as to those matters he believes it to be true.¹

A. B. (or, F. R.)

(Jurat, as in form No. 32.)

(Annex notice of presentation of petition, form No. 324.)

1. The proceeding is required to be instituted by the presentation of a petition by the plaintiff to the Supreme Court. (N. Y. Code Civ. Proc., § 3360, subd. 1.) See *Matter of Broadway and Seventh Ave. R. Co.* (73 Hun, 7).

2. If the corporation is a political division of the State, the names and places of residence of its principal officers; and if the state, the name and place of residence of the officer acting in its behalf in the proceeding are required to be stated. (Id.)

3. The petition or the answer thereto must be verified, and the provisions of the New York Code of Civil Procedure relating to the form and contents of the verification of pleadings in courts of record, and the persons by whom it

may be made, are made applicable to the verification. (N. Y. Code Civ. Proc., § 3366.) See *Matter of St. Lawrence and Adirondack R. Co.* (133 N. Y. 270.)

The provisions for the condemnation of real property, under which this form and the following forms of chapter XIV have been prepared, were added to the New York Code of Civil Procedure, by act of the legislature passed April 4, 1890.

These provisions took effect May 1, 1890, and are not to affect any proceeding previously commenced. (Id., § 3384.) See, also, *Matter of Thomson* (86 Hun, 405); *City of Syracuse v. Stacey* (86 Hun, 441); *Matter of Brooklyn Elevated R. Co.* (87 id. 104).

No. 324.

Notice of presentation of petition, form No. 323.

(N. Y. Code Civ. Proc., § 3361.)

(Title of proceeding as in form No. 323.)

Take notice that the petition of A. B. (or, of the — company) in the above-entitled proceeding (a copy of which is hereto annexed and herewith served upon you), will be presented to a Special Term of the Supreme Court, to be held at the (court-house) in the (city) of —, on the — day of —, 1—, at the opening of the court on that day (or, at — o'clock in the — noon of that day), or as soon thereafter as counsel can be heard, and that a motion will then and there be made that the prayer of the said petition be granted.¹

Dated —, 1—.

Yours, etc.,

I. T.,

Attorney for petitioner.

(Office address.)

To C. D., etc. (naming defendants).

1. The petition (form No. 323) is to be presented to a Special Term of the Supreme Court, held in the judicial district where the property or

some portion of it is situated, and a copy of the petition and notice must be served upon all the owners of the property at least eight days prior to its presentation. (N. Y. Code Civ. Proc., § 3361.) See, also, as to service of petition and notice appearance for infant, etc., *Id.*, §§ 3362-3364. And for forms of proof of service of petition and notice, etc., see *Lansing's Forms of Civil Procedure*, vol. 1, pp. 42 to 70.

No. 325.

Order appointing guardian ad litem for infant, idiot, etc., defendant, in proceeding for condemnation of real property.

(N. Y. Code Civ. Proc., § 3363.)

At, etc., as in form No. 329.

(Title of proceeding, as in form No. 323.)

The petition of the plaintiff in the above-entitled proceeding and notice of the presentation thereof at this time and place, having been presented to the court, with proof of due service thereof, and it appearing that the defendant, E. F., is an infant (or idiot; or, lunatic; or, habitual drunkard) having no general guardian (or, committee; or, trustee) [or, whose general guardian; or, committee; or, trustee, has failed to appear for him].

It is hereby ordered, that M. B., of —, be and he is hereby appointed guardian *ad litem* of the said defendant, E. F., whose duty it shall be to appear for him and attend to his interests in said proceeding, and that said M. B., before entering upon the discharge of his duties, as such guardian, give security for the faithful performance of his duties as such, by his bond, with sufficient sureties, to be approved by a justice of this court, in the penal sum of — dollars.¹

1. See § 3363 of the New York Code of Civil Procedure.

No. 326.

Bond of guardian ad litem of infant, etc., in proceeding for condemnation of real property.

(N. Y. Code Civ. Proc., § 3363.)

As in form No. 299, to (*) and from thence as follows:

That if the above bounden M. B. shall and do well and faithfully discharge his duties as guardian *ad litem* of E. F., an (infant) defendant in a proceeding in said court, for the

condemnation of real property, in which A. B. (or, The A. B. Company) is plaintiff and said E. F. and others are defendants, to which he has been duly appointed by an order of the said court made in said proceeding, dated —, 1—, then the preceding obligation to be void, otherwise to be and remain in full force and virtue.¹

| | |
|---------------------------|-----------------|
| Sealed and delivered in } | E. F. [L. S.] |
| presence of } | G. H. [L. S.] |
| K. L. | [I. J. [L. S.]] |

(Acknowledgment, affidavit by sureties and approval by judge, as in form No. 302.)

1. See § 3363 of New York Code to bond in legal proceeding, §§ 810 of Civil Procedure, and generally as to 816, id.

No. 327.

Answer by owner of property to petition.

(N. Y. Code Civ. Proc., § 3365.)

(Title of proceeding, as in form No. 323.)

The defendant, E. F., answering the petition of the plaintiff in the above-entitled proceeding, denies (or, denies upon information and belief)¹ that, etc. [stating allegation of the petition denied by him, and in like manner make denial of each allegation specifically denied].

[Or, denies (upon information and belief; or, any knowledge or information sufficient to form a belief, as to²) each and every allegation in the said petition contained.]

[Or, denies any knowledge or information sufficient to form a belief as to whether, etc. (stating the allegation as to which such denial is made), and in like manner as to each allegation so denied.]

And the said defendant, further answering the said petition, alleges that, etc. (stating new matter constituting a defense to the proceeding).³

P. G.,
Defendant's Attorney
(Office address.)

[Verification substantially as in form No. 323.]⁴

1. A denial, in a verified answer, complaint, upon information and of a material allegation of the belief, is good. (Bennett v. Low

Manufacturing Company, 110 N. Y. 150.)

2. See *Mahan v. Harlem Savings Bank* (5 Hun, 439).

3. Upon presentation of the petition and notice with proof of service thereof, an owner of the property may appear and interpose an answer, which must contain a general or specific denial of each material allegation of the petition controverted by him, or of any knowledge or in-

formation thereof sufficient to form a belief, or a statement of new matter constituting a defense to the proceeding. (N. Y. Code Civ. Proc., § 3365.)

As to the manner of trial and decision of the issues caused by the petition and answer, see § 3367, id.

4. See § 3366, New York Code of Civil Procedure, cited in note 3 to form No. 323.

No. 328.

Decision by court on trial of issues in proceeding for condemnation of real property.

(N. Y. Code Civ. Proc., § 3367.)

(Title of proceeding, as in form No. 323.)

The issues raised by the petition and answer of the defendant, A. B., herein, having been tried by the court, and the court having heard the allegations of the respective parties, and arguments of counsel having been heard and duly considered, I do find and decide as matters of fact, as follows :

First.

Second.

Third.

And I find and decide as matters of law, as follows :

First.

Second.

Third. That the plaintiff is entitled to the relief demanded by the petition herein, and to judgment that the condemnation of the real property described in the petition herein is necessary for the public use, and that the plaintiff is entitled to take and hold the said property for the public use specified in said petition, to-wit: (stating same), upon making compensation therefor [or, that the defendant is entitled to judgment that the said petition be dismissed with costs, to

be taxed by the clerk.] And I direct judgment to be entered hereupon accordingly.

Dated —, 1—

A. M.,

Justice of the Supreme Court.

1. The decision of the court or exceptions thereto, and the making referee in writing is to be filed or de- and settlement of a case for the livered to the attorney for the pre- review thereof upon appeal, and vailing party, within twenty days to the proceedings which may be after the final submission of the had, in case such decision is not proofs and allegations of the parties, filed or delivered within the time and the provisions of the Code of above required, and to the powers Civil Procedure, relating to the form of the court and referee upon such and contents of decisions upon the trial, shall be applicable to a trial and trial of issues of fact by the court or decision in these proceedings. (N. a referee, and to making and filing Y. Code Civ. Proc., § 3367.)

No. 329.

Order of reference in proceeding for condemnation of real property.

(N. Y. Code Civ. Proc., § 3367.)

At a special term of the Supreme Court, held at the (city hall), in the (city) of —, on the — day of —, 1—.

Present — Hon. A. B., Justice.

(Title of proceeding, as in form No. 323.)

On reading and filing the petition of A. B. (or, of the — company), in the above-entitled proceeding, dated —, 1—, and notice of presentation thereof at this term, with due proof of service thereof upon the defendants, and C. D., one of the owners of the real property described in said petition, having appeared and interposed an answer to said petition, and after hearing M. R., counsel for said petitioner, and P. F., counsel for said C. D., it is hereby ordered, that the issue (or, issues) raised by the said petition and answer, be and the same is (or, are) hereby referred to I. J., of —, as referee, to hear and determine the same.¹

1. See note 1 to form No. 328, as to this reference.

No. 330.**Oath of referee appointed in proceeding for condemnation of real property.**

(Title of proceeding as in form No. 323.)

— COUNTY, ss.:

I, I. J., of —, the referee appointed by order of the court in the above-entitled proceeding, do solemnly swear that I will fairly and faithfully try the issues in the said proceeding, and will make a just and true report, according to the best of my understanding.¹

(Jurat, as in form No. 32.)

I. J.

1. The statute (N. Y. Code Civ. Proc., § 3367) does not seem to require the making of this oath.

No. 331.**Referee's report in proceeding for condemnation of real property.**

(N. Y. Code Civ. Proc., § 3367.)

(Title of proceeding, as in form No. 323.)

I, I. J., referee, duly appointed by the court in the above-entitled proceeding to hear and determine the issues raised by the petition and answer therein, do respectfully report :

That having been attended by the parties and their counsel (and having taken the oath as referee which is hereto annexed, before proceeding to hear the testimony in said proceeding),¹ and having heard the proofs and allegations of the respective parties, I do find and decide as follows :

I find as matters of fact :

First. That (insert finding).*Second.* That (insert finding).

And I find, as conclusions of law, as follows :

First. That (insert finding).*Second.* That (insert finding).

Third. That (insert third finding of law contained in form No. 328), and I direct judgment to be entered accordingly.²

Dated —, 1 —.

I. J., Referee.

1. See note 1 to form No. 330.

ence by notice, as prescribed by the

2. See note 1 to form No. 328. To prevent the termination of a refer-

Code of Civil Procedure (§ 1019), the report must be actually delivered to

the attorney of one of the parties, or filed with the clerk within sixty days from the time the cause was finally submitted. An offer by a referee to deliver his report to the successful party, on payment of his fees, within the time limited, is not equivalent to a delivery. (*Little v. Lynch*, 99 N. Y. 112.)

Under section 3367 of New York Code of Civil Procedure, the time

limited for the delivery of the report is twenty days after the final submission of the proofs and allegations of the parties. (See note above referred to.)

The report must state separately the facts found and the conclusions of law, and must direct the judgment to be entered thereupon. (N. Y. Code Civ. Proc., § 1022.) But see amendment to that section by ch. 688 of Laws of 1894. See also *City of Syracuse v. Benedict* (86 Hun, 343).

No. 332.

Notice of motion for judgment upon the report of referee or decision of the court in proceeding for condemnation of real property, and for appointment of commissioners of appraisal.

(N. Y. Code Civ. Proc., § 3369.)

(Title of proceeding, as in form No. 323.)

Take notice that upon the report of J. L., referee (or, upon the decision of Hon. A. O., justice of the Supreme Court), made in the above-entitled proceeding, dated —, 1—, a copy of which report (or, decision) is herewith served upon you, and upon all the papers and proceedings in the above-entitled proceeding, a motion will be made at a Special Term of the Supreme Court, to be held at the (city hall) in the (city) of —, in the county of —, on the — day of —, 1—, at the opening of the court on that day, (or, at — o'clock in the — noon), or as soon thereafter as counsel can be heard for judgment pursuant to the direction of the referee (or, court), contained in the said report (or, decision), and adjudging that the condemnation of the real property described in the petition in said proceeding is necessary for the public use, and that the plaintiff, A. B. (or, the — company), is entitled to take and hold the said property for the public use specified in said report (or, decision), upon making compensation therefor, and, also, for the appointment, pursuant to statute, of three disinterested and competent freeholders, residents of the county of —, or of some adjoining county, as commissioners to ascertain the compensation to be made to the owner (or, owners), for

the property to be taken for the public use specified in the said report (or, decision), and that the court will fix the time and place for the first meeting of the said commissioners, and for such other or further relief as may be proper.¹

Dated —, 1—.

Yours, etc.,

F. P.,

Attorney for the said petitioner.
(Office address.)

To F. P., etc. (naming the defendants who have appeared or their attorneys).

1. If a trial has been had, at least eight days' notice of such appointment must be given to all defendants who have appeared. (N. Y. Code Civ. Proc., § 3369, last clause.) See Matter of Mat. Elevated R. (136 N. Y. 500); Manhattan Railway v. Stroub (68 Hun, 90).

No. 333.

Judgment, after trial in proceeding for condemnation of real property.

(N. Y. Code Civ. Proc., § 3369.)

(Title of proceeding, as in form No. 323.)

At a special term of the Supreme Court, held at the (city) of —, in the county of —, on the day of —, 1—.

Present — Hon. A. O., Justice.

The issues raised by the petition and answer in the above-entitled proceeding having been tried before I. J., Esq., the referee appointed by order of this court, duly made and entered, dated —, 1—, to hear and determine the same (or, at a — court, held at the (city) of —, on the day of —, 1—, before Hon. A. M., a justice of said court), and the report of said referee (or, the decision of said court), dated —, 1—, in favor of plaintiff (or, defendant), having been duly made in writing and filed:

Now, therefore, it is adjudged, pursuant to the direction of the said court (or, referee), contained in said decision (or, report), on motion of M. N., attorney for the plaintiff [or, defendant (A. B.)], that the condemnation of the real prop-

erty described in the petition in this proceeding as follows, to-wit: (describing property), is necessary for the public use, and that the plaintiff, A. B. (or, The — Company), is entitled to take and hold the said property for the public use specified in said petition, to-wit, (stating same), upon making compensation therefor, and it is further ordered and adjudged that J. F., of —, I. M., of —, and O. M., of —, three disinterested and competent freeholders, residents of the county of —, be and they are hereby appointed commissioners to ascertain the compensation to be made to the said A. B., etc., the owner (or, owners) of said property, and that the first meeting of the said commissioners be held at (insert place of meeting) on the — day of —, 1—, at — o'clock in the — noon [(*)] (or, that the said petition be dismissed and that the defendant, C. D., recover from and against the plaintiff, A. B. (or, The — Company), his costs of this proceeding, to-wit, the sum of — dollars, and — cents.}]¹

J. L.,
Clerk.

1. See section 3369 of New York Code of Civil Procedure, as to judgment to be rendered. The costs to be allowed to the defendant upon a dismissal of the petition are to be taxed by the clerk at the same rates as are allowed, of course, to a defendant prevailing in an action in the Supreme Court, including the allowances for proceedings before and after notice of trial. (Id., § 3369.) See also *Manhattan R. Co. v. Stroub* (68 Hun, 90).

No. 334.

Judgment for plaintiff in case no answer is interposed to petition in proceeding for condemnation of real property.

(N. Y. Code Civ. Proc., § 3369.)

At a special term, etc. (as in form No. 329.)

Present — Hon A. O., Justice.

(Title of proceeding, as in form No. 323.)

Judgment of the — day of —, 1—.

On filing the petition of A. B. (or, of the — Company) in the above-entitled proceeding, dated —, 1—, and notice

of the presentation of the same at this time and place, with due proof of the service of copies of said petition and notice upon all the owners of the property described in said petition at least eight days since, and the affidavit of C. D., dated —, 1—, that no answer has been interposed thereto, and it appearing from the said petition that the plaintiff is entitled to the relief thereby demanded, and on motion of P. R., of counsel for said petitioner, no one appearing in opposition thereto (or, after hearing M. N., of counsel for the defendant A. B.):

It is ordered and adjudged that the condemnation of the real property described in said petition as follows, viz.: All, etc. (describing property), is necessary for the public use, and that the plaintiff A. B. (or, the — Company), is entitled, etc. (concluding as in form No. 333, to (*).¹

1. See § 3369 of New York Code of Civil Procedure, as to judgment in this proceeding in case no answer has been interposed, and it appears from the petition that the plaintiff is entitled to the relief demanded. See amendment to said § 3369 by ch. 530 of Laws of 1895.

No. 335.

Subpœna issued by commissioners of appraisal in proceeding for condemnation of real property.

(N. Y. Code Civ. Proc., § 3370.)

The People of the State of New York to M. F. (and F. P.):

You (and each of you) are hereby commanded to be and appear at —, in the (city) of —, in the county of —, on the — day of —, 1—, at — o'clock in the — noon, before C. D., E. F., and G. H., commissioners appointed pursuant to statute to ascertain the compensation to be made to the owners for the property to be taken for the public use in the matter of A. B. (or, the A. B. Company), plaintiff, against C. D., defendant, to testify, all and singular, what you may know in the said matter, on the part of the plaintiff (or, defendant), [and that you bring with you, and produce at the time and place aforesaid, a certain (describing book, paper, etc.) now in your custody, and all other

deeds, evidences and writings, which you have in your custody or power concerning the premises], and for a failure to attend you will be deemed guilty of contempt of court, and liable to pay all loss and damage sustained thereby to the party aggrieved, and forfeit fifty dollars in addition thereto.

Witness, Hon. A. O., one of the justices of our said court, at —, this — day of —, 1—.¹

A. M.,
(Plaintiff's), attorney,
(Office address.)

C. D.,
Commissioner.

1. Any of the commissioners may to witnesses. (N. Y. Code Civ. issue subpoenas and administer oaths, Proc., § 3370.)

No. 336.

Oath to be administered to witness by commissioners of appraisal in proceeding for condemnation of real property.

(N. Y. Code Civ. Proc., § 3370.)

You do solemnly swear that the evidence you shall give in the matter of A. B. (or, the A. B. Company), plaintiff, against C. D., defendant, shall be the truth, the whole truth, and nothing but the truth, so help you God.¹

1. See note 1 to form No. 335.

No. 337.

Notice of meetings of commissioners in proceedings for condemnation of real property.

(N. Y. Code Civ. Proc., § 3370.)

(Title of proceeding, as in form No. 323.)

Sir:

You are hereby notified that a meeting of the undersigned, commissioners appointed in the above-entitled proceeding, to ascertain the compensation to be made to the owners for

the property to be taken for public use in said proceeding, will be held at —, in the (city) of —, on the — day of —, 1—, at — o'clock in the — noon.¹

Dated —, 1—. (Signatures of Commissioners.)
Commissioners.

To C. D. (or, M. N., attorney or agent for C. D., etc.) defendant.

1. Whenever the commissioners notice of such meeting to be given shall meet, except by appointment of to the defendants who have appeared, the court or pursuant to adjournment, or their agents or attorneys. (N. Y. they shall cause at least eight days' Code Civ. Proc., § 3370.)

No. 338.

Oath of commissioners of appraisal in proceeding for condemnation of real property.

(N. Y. Code Civ. Proc., § 3370.)

(Title of proceeding, as in form No. 323.)

COUNTY OF —, ss.:

We, the undersigned, commissioners appointed by a judgment of the Supreme Court, made in the above-entitled proceeding, at a special term of the said court held at, etc., on, etc., and duly entered in — county, to ascertain the compensation to be made to the owners for the property described in said judgment to be taken for the public use, specified in said judgment, do solemnly swear (or, affirm) that we will support the Constitution of the United States, and the Constitution of the State of New York, and that we will faithfully discharge the duties of the office of such commissioners, according to the best of our ability.¹

(Signatures of Commissioners.)

(Jurat, as in form No. 32.)

1. See first clause of § 3370 of the N. Y. Code of Civil Procedure, as to the commissioners' oath.

No. 339.

Report of commissioners of appraisal in proceedings for condemnation of real property.

(N. Y. Code Civ. Proc., § 3370.)

(Title of proceeding, as in form No. 323.)

To the Supreme Court of the State of New York:

We, the undersigned, commissioners appointed by a judgment of this court, made and rendered at a Special Term thereof, held at the (city) of —, on the — day of —, 1—, and duly entered in Albany county, to ascertain the compensation to be made to the owners for the real property to be taken for the public use specified in said judgment and hereinafter described, do respectfully report:

First. That we met at the time and place fixed by the said judgment for our first meeting, and having severally taken and subscribed the constitutional oath of office, which oath is annexed to this report, proceeded to view the premises described in the petition herein, and to hear the proofs and allegations of the parties.

Second. That we first viewed the premises owned by A. B., aforesaid, described as follows: All, etc. (insert description), and heard the proofs and allegations of the parties in respect thereto. That after the testimony in respect to said claim was closed, we (or, a majority of us, all being present) did, without unnecessary delay, ascertain and determine that the compensation which ought justly to be made by the plaintiff to the said A. B. for the real estate aforesaid, was the sum of — dollars.

Third. That we secondly viewed, etc. (proceed in like manner, as above, as to each claim).

Fourth. That the minutes of the testimony taken by us, in respect to the said claims and each of them, are hereto annexed marked "Exhibit A."

All of which is respectfully submitted.¹

Dated —, 1—.

(Signatures of Commissioners.)

(Annex "Exhibit A" minutes of testimony.)

1. The commissioners are to view the premises described in the petition, and hear the proofs and allegations of the parties, and reduce the

testimony taken by them, if any, to writing, and after the testimony in each case is closed, they, or a majority of them, all being present, are, without unnecessary delay, to ascertain and determine the compensation which ought justly to be made by the plaintiff to the owners of the property appraised by them; and in fixing the amount of such compensation, they are not to make any allowance or deduction on account of any real or supposed benefits which the owners may derive from the public use. But in case the plaintiff is a railroad corporation, and such real property shall belong to any other railroad corporation, the commissioners, on fixing the amount of such compensation, shall fix the same at its fair value for railroad purposes. (N. Y. Code Civ. Proc., § 3370)

They are to make a report of their proceedings to the Supreme Court, with the minutes of testimony taken by them, if any; and they are each to be entitled to six dollars for services, for every day they are actually engaged in the performance of their duties, and their necessary expenses, to be paid by the plaintiff. (Id.)

No. 340.

Notice of filing report of commissioners of appraisal, and of motion for confirmation thereof.

(N. Y. Code Civ. Proc., § 3371.)

(Title of proceeding, as in form No. 323.)

Take notice that a motion to confirm the report of the commissioners of appraisal herein, dated —, 1—, which was filed in the county clerk's office of — county, on the — day of —, 1—, will be made at a Special Term of the Supreme Court to be held at the — in the city of —, on the — day of —, 1—, at the opening of the court on that day (or, at — o'clock in the — noon), or as soon thereafter as counsel can be heard, and for such other and further relief as may be proper. That said motion will be made upon the said report, a copy of which is herewith served upon you, and upon the papers and proceedings herein.¹

Yours, etc.,

Dated —, 1—.

M. N.,

Attorney for (Petitioner).

(Office address.)

To A. B., etc. (naming parties who have appeared, or their attorneys).

1. Upon filing the report of the commissioners, any party may move for its confirmation at a special term, held in the district where the property or some part of it is situated, upon notice to the other parties who

have appeared, and upon such motion the court may confirm the report, or may set it aside for irregularity, or for error in the proceedings before the commissioners, or upon the ground that the award is excessive or insufficient. (N. Y. Code Civ. Proc., § 3371.)

No. 341.

Order confirming or setting aside the report of commissioners of appraisal in proceedings for condemnation of real property.

(N. Y. Code Civ. Proc., § 3371.)

At, etc. (as in form No. 329).

(Title of proceeding, as in form No. 323.)

It appearing to the satisfaction of the court, that upon due notice to all the owners of the property described in the petition herein, A. B. (or, the A. B. Company) duly presented to the Supreme Court of the State of New York, at a Special Term thereof, held at the (city) of —, on the — day of —, 1—, its petition in due form of law, duly verified, dated —, 1—, demanding for relief, that it might be adjudged that the public use required the condemnation of the real property therein described, and that the plaintiff was entitled to take and hold such property for the public use specified, to-wit, for (stating public use), upon making compensation therefor, and that commissioners of appraisal be appointed to ascertain the compensation to be made to the owners for the property so taken.

That such proceedings were thereupon had, that on the — day of —, 1—, a judgment was made at a Special Term of the Supreme Court, held at the (city) of —, on the — day of —, 1—, and duly entered in — county, adjudging that the condemnation of said real property was necessary for the said public use, and that the plaintiff was entitled to take and hold the said property for said public use, upon making compensation therefor, and appointing E. F., G. H. and I. J., three disinterested and competent freeholders, residents of the county of —, as commissioners for the purposes aforesaid, and fixing the — day of —, 1—, at —, in the (city) of —, in the county of —, at

— o'clock in the — noon, as the time and place for the first meeting of the said commissioners.

That on the — day of —, 1—, the said commissioners made a report of their proceedings, together with the testimony taken by them, to the said court, by which it appears that the said commissioners met at the said time and place designated in said order, and having first taken and subscribed the constitutional oath of office, proceeded to view the premises described in said petition, and to hear the proofs and allegations of the parties; that the said commissioners first viewed the premises owned by A. B., and described as follows: All, etc. (insert description), and heard the proofs and allegations of the parties in respect thereto: that after the testimony in respect to said case was closed, the said commissioners (or, a majority of the said commissioners, all being present), without unnecessary delay, ascertained and determined that the compensation which ought justly to be made by the plaintiff to the said A. B., for the real estate aforesaid, was the sum of — dollars (proceed in like manner as to each piece of property);

Now, upon the proceedings herein, and upon proof of due service of a copy of said report of said commissioners, and notice of motion to confirm the same, upon (name parties and their attorneys served), and on motion of A. M., of counsel for the said plaintiff, and after hearing, etc., and on reading and filing (name opposing affidavits);

It is ordered and directed that the said appraisal and report be and the same is hereby (*) in all respects confirmed, and that compensation shall be made to the said owners of the said property by the plaintiff, pursuant to the determination of the said commissioners, that is to say, to the said A. B., the sum of — dollars: to the said C. D., the sum of — dollars, etc.;

And it is further ordered, that upon payment of such compensation, the plaintiff shall be entitled to enter into the possession of the said property condemned, and take and hold it for the public use specified in said judgment.¹

And it is further ordered, that the (defendant, C. D.) recover of the plaintiff [A. B. (or, The A. B. Company)], the

costs of this proceeding, to be taxed by the clerk of — county [including an additional allowance of — dollars].

And it is further ordered that (here insert directions for payment to the general or special guardian, or committee or trustee of an infant, idiot, lunatic or habitual drunkard, or to an attorney appointed by the court to attend to the interests of any defendant, upon whom other than personal service may have been made, and who has not appeared, for costs, expenses and counsel fees, and by whom or out of what fund the same shall be paid),² [or, as above to (*) and from thence as follows: Set aside and that a rehearing be had before the said commissioners (or, before I. J., K. L., and L. M., three disinterested and competent freeholders, residents of the county of —, who are hereby appointed commissioners to ascertain the compensation to be made to the owners for the said property to be taken for the public use above specified)].³

1. If the report is confirmed, the court shall enter a final order in the proceeding, directing that compensation shall be made to the owners of the property, pursuant to the determination of the commissioners, and that upon payment of such compensation, the plaintiff shall be entitled to enter into the possession of the property condemned, and take and hold it for the public use specified in the judgment. Deposit of the money to the credit of, or payable to the order of the owner, pursuant to the direction of the court, is to be deemed a payment within the provisions of title 1 of chapter 23 of the Code of Civil Procedure. (N. Y. Code of Civ. Proc., § 3371, last clause.)

² See § 3372 of Code of Civil Procedure, as to costs and general directions for payment to guardians

of infants, etc., and see § 3373, *id.*, as to proceedings under final order, and effect of such order. See *City of Syracuse v. Benedict* (86 Hun, 343.)

3. Upon the motion the court may confirm the report, or may set it aside for irregularity, or for error of law in the proceedings before the commissioners, or upon the ground that the award is excessive or insufficient. If the report is set aside, the court may direct a rehearing before the same commissioners, or may appoint new commissioners for that purpose, and the proceedings upon such rehearing shall be conducted in the manner prescribed for the original hearing, and the same proceedings shall be had for the confirmation of the second report as are prescribed for the confirmation of the first report. (*Id.*, § 3371.)

No. 342.

Offer to purchase the property at a specified price, before service of petition and notice in proceeding for condemnation of real property.

(N. Y. Code Civ. Proc., § 3372.)

(Title of proceeding, as in form No. 323.)

The plaintiff hereby offers, pursuant to the provisions of section 3372 of the Code of Civil Procedure, to purchase from you the property described in the petition in the above-entitled proceeding as follows: (Insert description of property) at the sum of — dollars.¹

Yours, etc.,

A. B.,

(or, the A. B. Company, by R. F., President.)
Plaintiff.

To C. D.,
Defendant.

1. In all cases where the owner is a resident and not under legal disability to convey title to real property the plaintiff before service of his petition and notice, may make a written offer to purchase the property at a specified price, which must within ten days thereafter be filed in the office of the clerk of the county where the property is situated; and which cannot be given in evidence before the commissioners, or considered by them. (N. Y. Code Civ. Proc., § 3372.)

No. 343.

Acceptance of plaintiff's offer, form No. 342.

(N. Y. Code Civ. Proc., § 3372.)

(Title of proceeding, as in form No. 323.)

The defendant, C. D., hereby accepts the offer of the plaintiff, dated —, 1—, made in the above-entitled proceeding and heretofore served upon him, to purchase the property described in the petition in the said proceeding at the sum of — dollars.¹

Yours, etc.,

C. D.,

To A. B.
(or, The A. B. Company, plaintiff.)
Defendant.

1. The owner may at the time of the presentation of the petition, or at any time previously, serve notice in writing of the acceptance of

plaintiff's offer, and thereupon the plaintiff may upon filing the petition, with proof of the making of the offer and its acceptance, enter an order that upon payment of the compensation agreed upon, he may enter into the possession of the real property described in the petition, and take and hold it for the public use therein specified. (N. Y. Code Civ. Proc., § 3372.)

No. 344.

Order upon offer and acceptance in proceeding for condemnation of real property.

(N. Y. Code Civ. Proc., § 3372.)

At, etc., as in form No. 329.

(Title of proceeding, as in form No. 323.)

A written offer having been made on the — day of —, 1—, by the plaintiff in the above-entitled proceeding, before service of the petition and notice, pursuant to section 3372 of the Code of Civil Procedure, to the defendant, C. D., a resident of this State, and not under legal disability to convey title to real property, to purchase the property described in said petition at the price of — dollars, and said offer having been filed in the clerk's office of — county, on the — day of —, 1—, and the said C. D., having at (or, previous to) the time of the presentation of said petition, served notice in writing of the acceptance of plaintiff's said offer.

Now, upon filing the petition, with proof of making the said offer and its acceptance, it is hereby ordered, pursuant to said section 3372 of the Code of Civil Procedure, that upon payment of the compensation agreed upon, the plaintiff may enter into possession of the real property described in the petition as follows, to-wit: All, etc. (describing property), and take and hold said real property for the public use therein specified, to-wit, for (stating public use).¹

1. See note 1 to form No. 343.

No. 345.**Notice by plaintiff of abandonment of proceeding for condemnation of real property.**

(N. Y. Code Civ. Proc., § 3374.)

(Title of proceeding, as in form No. 323.)

Notice is hereby given that the plaintiff has determined to abandon and does hereby abandon the above-entitled proceeding.¹

Dated —, 1—.

M. F.,

Attorney for plaintiff.

(Office address.)

To the clerk of — county, and to C. D., etc. (name parties and their attorneys).

1. This notice must be filed and served within thirty days after the entry of the final order, and the plaintiff must also pay the fees and expenses of the commissioners, and the costs and expenses directed to be paid in such order; and thereupon payment of the amount awarded for compensation shall not be enforced, but in such case the plaintiff cannot renew proceedings to acquire title to such land, or any part thereof without a tender or deposit in court of the amount of the award and interest thereon. (N. Y. Code Civ. Proc., § 3374.)

No. 346.**Notice of appeal from final order in proceeding for condemnation of real property.**

(N. Y. Code Civ. Proc., § 3375.)

(Title of proceeding, as in form No. 323.)

SIRS:

Take notice, that the (defendant) C. D. hereby appeals to the Appellate Division of the Supreme Court, from (so much of) the final order made in the above-entitled proceeding, dated —, 1— (as affects the said C. D.), (and that (so much of) the judgment made on the — day of — 1—, in said proceeding and entered in the — county

clerk's office on the — day of —, 1—, and the proceedings antecedent thereto (affecting the said C. D.), will be brought up for review upon such appeal).¹

Dated —, 1—.

Yours, etc.,

M. F.,

Attorney for (defendant, C. D.)

(Office address).

To C. D., attorney for respondents and the county clerk of — county.

1. See section 3375 of the New York Code of Civil Procedure, as to such appeal and the effect thereof.

No. 347.

Notice of appeal from judgment rendered in favor of defendant in proceeding for condemnation of real property.

(N. Y. Code Civ. Proc., § 3376.)

(Title of proceeding, as in form No. 323.)

Take notice, that the plaintiff, A. B. (or, The A. B. Company), appeals upon questions of law and upon the facts¹ to the Appellate Division of the Supreme Court from (so much of) the judgment entered in the above-entitled proceeding on the — day of —, 1—, in the — county clerk's office (as directs that, etc.)² (and that the appellant intends to bring up for review upon such appeal the order entered in said proceeding, on the — day of —, 1—).³

Dated —, 1—.

J. F.,

Attorney for the Plaintiff.

(Office address.)

To M. N., Esq.,

Attorney for the defendant, and the clerk of — county.

1. See § 1346 of New York Code of Civil Procedure

2. See § 3376 of New York Code of Civil Procedure, as to this appeal.

If the judgment is affirmed, costs shall be allowed to the respondent,

but if reversed or modified, no costs of the appeal shall be allowed to either party. (Id., § 3376.)

3. See § 1301 of New York Code of Civil Procedure.

No. 348.

Notice of argument of appeal from the final order confirming the report of commissioners of appraisal in proceeding for condemnation of real property.

(N. Y. Code Civ. Proc., § 3377.)

(Title of proceeding, as in form No. 323.)

SIR:

Take notice that the appeal of C. D., from (so much of) the final order, in the above-entitled proceeding (as affects the said C. D.), will be brought to a hearing and argument before this court, at a General Term thereof, to be held at the court-house in the (city) of —, on the — day of — 1—, at the opening of the court on that day (or, at — o'clock in the —noon of that day), or as soon thereafter as counsel can be heard.

Dated — 1—.

Yours, etc.,

M. N.,

Attorney for Appellants.

(Office address.)

To P. C., Esq., Attorney for respondent.

No. 349.

Order upon appeal from final order in proceeding for condemnation of real property directing re-appraisal by same or new commissioners.

(N. Y. Code Civ. Proc., § 3377.)

At a General Term of the Supreme Court held in and for the — judicial department, at — in the (city) of —, on the — day of —, 1—.

Present:— Hons. A. A., Presiding Justice, and W. L. and J. L., Justices.

(Title of proceeding, as in form No. 323.)

(*) The appeal of C. D., herein, coming on to be heard, and after hearing M. N. of counsel for the appellant, and J. F. for the respondent herein, and due deliberation having been had thereupon:

It is hereby ordered, that the report and appraisal made herein, be and the same are hereby respectively set aside, and that the order confirming said report and appraisal be and the same is hereby vacated.

And it is further ordered, that a new appraisal be had herein before the same commissioners heretofore appointed [or, and for that purpose it is further ordered, that I. J. of —, J. K. of —, and K. L. of —, three disinterested and competent freeholders, residing in the county of —, be and they are hereby appointed commissioners to ascertain the compensation to be made to the owners for the property hereinafter described, to be taken for the public use specified in the petition in this proceeding, to-wit, for (stating public use).] Said property is described as follows: (describing same).

And it is further ordered, that the first meeting of said commissioners be held at (insert place of meeting), on the — day of —, 1—, at — o'clock in the —noon.¹

1. See § 3377 of the New York Code of Civil Procedure. The report of the commissioners upon this second appraisal is made final and conclusive upon all parties interested.

That a second appraisal cannot be claimed as a matter of right, see *N. Y. and Erie Railroad Co. v. Coburn* (6 How. Pr. 223); *Buffalo, etc., Plankroad Co. v. Commissioners of Highways* (10 id. 237).

No. 350.

Order affirming, reversing or modifying judgment on appeal therefrom, in proceeding for condemnation of real property.

(N. Y. Code Civ. Proc., § 3376.)

As in form No. 349, to (*) and from thence as follows:

The appeal in the above-entitled proceeding from the judgment entered therein on the — day of —, 1—, having been heard at this term, it is hereby, on motion of A. M., for the respondent, after hearing M. N. for the appellant:

Ordered, that the said judgment be and the same is hereby wholly affirmed, with costs of the said appeal, to the respondent [or, wholly reversed and a new trial therein or

dered;¹ or, modified in the following particulars, to-wit (state modification): and that the said judgment, as thus modified, be and the same is hereby affirmed (or state other relief)]²

1. See note to next form, No. 351, as to cases in which new trial should be granted.

2. The provisions of chapter 12 of the New York Code of Civil Procedure relating to appeals from judgments are made applicable to such appeals; and on the hearing of the appeal the General Term may affirm, reverse or modify the judgment, and

in case of reversal may grant a new trial, or direct that judgment be entered in favor of the plaintiff. If the judgment is affirmed, costs shall be allowed to the respondent; but if reversed or modified, no costs of the appeal shall be allowed to either party. (N. Y. Code Civ. Proc. § 3376.)

No. 351.

Judgment of affirmance on appeal from judgment in proceeding for condemnation of real property.

(N. Y. Code Civ. Proc., § 3376.)

(Title of proceeding, as in form No. 323.)

Judgment of the — day of —, 1—.

The appeal taken by the defendant, C. D. (or, by the plaintiff) in the above-entitled proceeding, having been heard at a General Term of the — court, held in and for the — Judicial Department, on the — day of —, 1—, and an order of said General Term having been made and entered affirming the judgment of the Supreme Court, entered in said proceeding on the — day of —, 1—, in the county clerk's office of — county, with costs of the said appeal to the respondent; (or, reversing the judgment of, etc. (as above), and ordering a new trial; or modifying the judgment of, etc. (as above), as hereinafter mentioned).

Now, on motion of M. N., attorney for the (respondent), it is hereby adjudged that the said judgment appealed from be and the same is hereby wholly (*) affirmed, and that the respondent (A. B., or, the A. B. Company) recover from and against the appellant the sum of — dollars, costs of said appeal.

(Or, as above, to (*), and from thence as follows: reversed and a new trial ordered.)¹

[Or, as above, to (*), and from thence as follows: modified in the following particulars, to-wit (state modification): and that the said judgment, as thus modified, be and the same is hereby affirmed.]²

J. L.,
Clerk.

1. See, as to cases in which new trial should be granted, *Robinson* (37 id. 345); *Thomas v. N. Y. Life Ins. Co.* (99 N. Y. 250).
De Mill (75 N. Y. 370, 374); *Price v. Price* (33 Hun, 432); *Patterson v.*

No. 352.

Affidavit upon motion for permission to plaintiff to enter upon real property in proceedings for its condemnation.

(N. Y. Code Civ. Proc., § 3380.)

(Title of proceeding, as in form No. 323.)

A. B., of —, being duly sworn, says: That he is (describing affiant); that the above-entitled proceeding has been commenced to acquire title to the real property described in the petition therein, a copy of which is hereto annexed, for the public use mentioned in said petition by condemnation thereof. That an answer to said petition has been interposed by the defendant C. D., a copy of which is hereto annexed. That the public interests will be prejudiced by delay in plaintiff's entering upon the said real property, as will appear from the following facts, namely (state facts showing this to be the case).¹

A. B.

(Jurat, as in form No. 32.)

1. See § 3380 of the New York Code of Civil Procedure as to this proceeding.

No. 353.

Notice of motion for permission to plaintiff to enter upon real property in proceeding for its condemnation.

(N. Y. Code Civ. Proc., § 3380.)

(Title of proceeding, as in form No. 323.)

To C. D., Esq. (attorney for) defendant.

SIR :

Take notice that upon the affidavit and papers with copies of which you are herewith served, and upon all the papers and proceedings in the above-entitled proceeding, a motion will be made at a special term of the Supreme Court, to be held at —, in the (city) of —, on the — day of —, 1—, at the opening of the court (or, at — o'clock in the — noon), or as soon thereafter as counsel can be heard, for an order (*) directing that the plaintiff be permitted to enter immediately upon the real property described in the petition in said proceeding, and devote it temporarily to the public use specified in said petition, upon depositing with the court the sum stated in the answer of said C. D. as the value of the property, to-wit: The sum of — dollars, and for such other or further relief as to the said court may seem just and proper.¹

Dated —, 1—

Yours, etc.,

I. J.,

Attorney for plaintiff.

(Office address.)

1. See § 3380 of the New York Code of Civil Procedure, generally as to this application.

No. 354.

Order permitting the plaintiff to enter upon the real property to be taken in proceeding for its condemnation.

(N. Y. Code Civ. Proc., § 3380.)

At, etc., as in form No. 329.

(Title of proceeding, as in form No. 323.)

On reading and filing the affidavit of A. B., dated —, 1—, with notice of motion and proof of due service thereof

upon C. D., the attorney for the defendant, and on motion of M. N., counsel for the plaintiff, after hearing O. F., counsel for the defendant C. D. (or, no one appearing to oppose);

It is hereby ordered, that the plaintiff be permitted to enter immediately upon the real property described in the petition in the above-entitled proceeding, and devote it temporarily to the public use specified in the petition, upon depositing with the court the sum stated in the answer of said C. D. as the value of the said property, to-wit, the sum of — dollars.¹

1. As to the application to be made section 3380 of the New York Code of the amount deposited, and further of Civil Procedure. proceedings in regard thereto, see

No. 355.

Notice of pendency of proceeding for the condemnation of real property.

(N. Y. Code Civ. Proc., § 3381.)

(Title of proceeding, as in form No. 323.)

Notice is hereby given, that a proceeding has been commenced in the Supreme Court of the State of New York, by the above-named plaintiff against the above-named defendant (or, defendants), and is now pending in said court, and that the object of said proceeding is to acquire title to the real property described in the petition in said proceeding, for the public use of (stating same) by the condemnation of said real property in the manner prescribed in title one of chapter twenty-three of the Code of Civil Procedure, and that the real property situated in the county of —, affected by said proceeding, is described as follows, to wit (describe property).¹

Dated —, 1—.

M. N.,
Plaintiff's Attorney.
(Office address).

To the county clerk of — county:

You are hereby directed to index the foregoing notice to the names of all the defendants [or, to the name (or names), of the defendant (or, defendants, C. D. and (E. F.)), in the above-entitled proceeding.²

M. N.,
Plaintiff's Attorney.
(Office address.)

1. As to contents of this notice and filing and effect thereof, see section 3381 of the New York Code of Civil Procedure.

2. The county clerk must immediately record such notice when filed, in the book in his office kept for the

purpose of recording notices of pendency of actions, and index it to the name of each defendant specified in the direction appended at the foot of the notice, and subscribed by the plaintiff or his attorney. (N. Y. Code Civ. Proc., § 3381.)

Conveyances.

See Deeds ; Bills of Sale ; Assignments.

CHAPTER XV.

Forms of Copyright.

No. 356. Record to be made of the name of a book, etc., upon granting a copyright, by librarian of Congress.

No. 356.

Record to be made of name of book, etc., upon granting of copyright by librarian of Congress.

(U. S. Rev. Stat., § 4957.)

Library of Congress, to-wit: Be it remembered that on the — day of — A. B., of —, hath deposited in this office the title of a book (map, chart, or otherwise, as the case may be, or description of the article), the title or description of which is in the following words, to-wit: (here insert the title or description) the right whereof he claims as author, (originator, or proprietor, as the case may be) in conformity with the laws of the United States respecting copyrights.¹

C. D.,

Librarian of Congress.

1. See Revised Statutes of the United States, §§ 4956, 4957, as to delivery at the office of the librarian of Congress, or depositing in the mail addressed to such librarian, of a printed copy of the title of the book or other article, etc., and the record to be made by him. Section 4957 also provides that he shall give a copy of the title or description, under the seal of the librarian of Congress, to the proprietor whenever he shall require it. As to his fees for recording title and copy, see *id.*, § 4958.

The "printed" copy of the title of a book required by section 4956 of the United States Revised Statutes, to be delivered or mailed to the librarian of Congress, may be "printed" with a pen as well as type, with or without the aid of tracing paper. (*Chapman v. Ferry*, 18 Fed. Rep. 539.)

See, also, *Marsh v. Warren* (14 Blatchf. 263); *Donnelley v. Ivers* (20 id. 281; 18 Fed. Rep. 592); *Lawrence v. Dana* (4 Cliff. 1, 63; S. C., 2 Am. L. T. N. S. 402), generally as to deposit of title.

CHAPTER XVI.

Forms Relating to Corporations.

TITLE I.

FORMS UNDER BANKING LAW OF THE STATE OF NEW YORK.

(Laws of N. Y. of 1892, chap. 689.)

ARTICLE I.

FORMS RELATING TO BANKING CORPORATIONS AND INDIVIDUAL BANKERS.

(Laws of N. Y. of 1892, chap. 689, art. 2.)

- No. 357. Affidavit to be made before commencing business of banking.
- 358. Report by banking corporation or individual banker, to be made at least once in every three months.
- 359. Statement to be published annually by bank or individual banker of unclaimed deposits, dividends, etc.
- 360. Application to superintendent of banks by corporation for leave to change place of business.
- 361. Certificate of superintendent of banks consenting to change of location.
- 362. Certificate of superintendent of banks of approval, and of compliance with provisions of banking laws.
- 363. Certificate of superintendent in case of foreign corporation.
- 364. Appointment of superintendent as attorney for service of process.
- 365. Certificate of incorporation of bank.
- 366. Certificate of individual banker's residence to be filed by him.
- 367. Notice of change of place of residence of individual banker.
- 368. Agreement of consolidation of two or more banking corporations.
- 369. Notice to stockholders of intention to consolidate two or more banking corporations.
- 370. Affidavit of service of notice of intention to consolidate two or more banking corporations.
- 371. Consent of stockholders of banking corporation to consolidation.
- 372. Affidavit of assent of stockholders owning two-thirds of stock of banking corporation to consolidation.
- 373. Certificate of superintendent as to value of property of corporations to be consolidated.

- No. 374. Dissent of stockholder to consolidation of banking corporation.
 375. Oath of directors of banking corporation.
 376. Authority of stockholders to change National bank to State bank.
 377. Resolution of board of directors of bank in favor of change of National bank to State bank.
 378. Certificate of incorporation of banking corporation changing from National to State bank.
 379. Notice to comptroller of the currency that a vote of stockholders of National bank to go into liquidation and be closed has been taken.
 380. Notice to be published of vote of shareholders owning two-thirds of stock of National bank to go into liquidation and close up its affairs.
 381. Assent of depositors to the transfer of their deposits.
 382. Power of attorney for distant stockholders, if their assent is needed.

No. 357.

Affidavit to be made before commencing business of banking.

(Laws of N. Y. of 1892, chap. 689, § 13.)

— COUNTY, ss. :

A. B. and C. D., of, etc., being severally duly sworn, say, and each for himself says : That the said A. B. is the (president), and said C. D. the (cashier) of the (name of corporation). That the whole (or, the — portion) of the capital stock of said banking corporation has been actually paid or secured according to law.¹

A. B.
C. D.

(Jurat, as in form No. 32.)

1. Section 13 of chapter 689 of Laws of New York of 1892 requires that no banking corporation shall commence its corporate business until its president and cashier, or treasurer or secretary, or its two principal officers by whatever name known, shall have made and subscribed an affidavit stating that the whole of its capital stock, or such portion thereof as by law shall be required to be paid or secured before the commencement of its operations, has been actually

paid or secured according to law. Such affidavit may be made before any officer authorized to administer oaths in the county where the corporation has its principal place of business, and shall be filed in the clerk's office of such county. Every such corporation shall cease to be a corporation if the affidavit above required shall not be made and filed within one year from the time its charter is granted.

No. 358.

Report by banking corporation or individual banker, to be made at least once in every three months.

(Laws of N. Y. of 1892, chap. 689, § 20.)

QUARTERLY REPORT OF THE ——— BANK OF ———, ON THE MORNING OF ———
THE ——— DAY OF ———, 1——.

Resources.

| | |
|--|--------------------------|
| Loans and discounts, less due from directors..... | \$352,711 16 |
| Due from directors..... | 40,500 00 |
| Overdrafts, as per schedule..... | 168 53 |
| Due from trust companies, State and National banks, as per schedule..... | 25,729 38 |
| Stocks and bonds, as per schedule | 1,000 00 |
| Specie..... | 1,540 74 |
| U. S. legal tender notes and circulating notes of National banks | 6,301 00 |
| Cash items, viz: | |
| Bills and checks for the next day's exchanges . | \$744 98 |
| Other items carried as cash, as per schedule... | 2,590 53 |
| | <hr/> 3,335 51 |
| Loss and expenses, viz.: | |
| Current expenses | 382 50 |
| Assets not included under any of the above heads, viz.: | |
| Furniture and fixtures..... | 3,000 00 |
| | <hr/> <hr/> \$434,668 82 |

Liabilities.

| | |
|---|--------------------------|
| Capital stock paid in, in cash..... | \$100,000 00 |
| Surplus fund | 10,000 00 |
| Undivided profits, viz.: | |
| Discount | \$528 98 |
| Exchange..... | 9 65 |
| Other profits..... | 1,432 26 |
| | <hr/> 1,970 89 |
| Due depositors as follows, viz.: | |
| Deposits subject to check..... | \$200,704 20 |
| Demand certificates of deposit | 1,352 50 |
| Time certificates of deposit | 50,204 75 |
| | <hr/> 252,261 45 |
| Due trust companies, State and National banks, as per schedule..... | 19,384 66 |
| Due treasurer of the State of New York | 51,051 82 |
| | <hr/> <hr/> \$434,668 82 |

STATE OF NEW YORK, } ss.:
 County of —, }

—, president, and —, cashier of the — bank of —, N. Y., a bank located and doing business at No. —, in the city of —, in said county, being duly sworn, each for himself, says, that the foregoing report, with the schedule accompanying the same, is, in all respects, a true statement of the condition of the said bank, before the transaction of any business on the — day of —, 1—, to the best of his knowledge and belief; and they further say that the business of said bank has been transacted at the location named, and not elsewhere; and that the above report is made in compliance with an official notice received from the superintendent of the banking department, designating —, the — day of —, 1—, as the day on which such report shall be made.¹

—, President.

—, Cashier.

Severally subscribed and sworn to by both depo- }
 nents, the — day of —, 1—, before me. }

—,
 Notary Public, — County.

1. See section 20, chapter 689 of Laws of New York of 1892, as to this report and its contents. Also as to contents of report by savings banks, trust companies and safe deposit companies, see same section. such report, or to include therein any matter required by the superintendent, see § 21, id. As to publication by superintendent of summary statement of such report, see § 22, id.

As to penalties for neglect to make

No. 359.

Statement to be published annually by bank, or individual banker, of unclaimed deposits, dividends, etc.

(Laws of N. Y. of 1892, chap. 689, § 28.)

Statement by the (name of corporation) a banking corporation of the State of New York (or, by A. M., an individual banker of the State of New York) located, etc. (or of, etc.) made pursuant to section 28 of chapter 689 of the Laws of New York of 1892, of all deposits made with such bank (or, with said A. M.), and of all dividends and interest declared upon any of the stock, bonds, or other evidences of indebtedness, which at the date of this state-

ment amount to fifty dollars or over, and have remained unclaimed by any person or persons authorized to receive the same, for five years next preceding such date, viz. :

| Date of deposit. | Amount thereof. | Name and residence of person making it. | Name and residence of person in whose favor dividend was declared or interest accrued. | Time when declared or when interest accrued. | Amount of dividend or interest. | On what number of shares, and on what amount of bonds, stock or other evidence of indebtedness declared or accrued. |
|------------------|-----------------|---|--|--|---------------------------------|---|
| | | | | | | |

Dated —, 1—.

The (name of corporation.)

by C. R., Cashier.
(or, A. M.)

STATE OF NEW YORK, } ss. :
— County,

C. R. (or, A. M.) of —, being duly sworn, says : That he is the cashier of the (name of corporation) (or, is the individual banker) mentioned in the foregoing statement : That said statement is true and accurate.¹

C. R.
(or, A. M.)

(Jurat, as in form No. 32.)

1. See section 28 of chapter 689 of Laws of New York of 1892, as to this statement which is required by that section to be published annually, on or before September first, for six successive weeks in one newspaper of the county in which such bank or in-

dividual banker is located, and in a paper at Albany, in which notices by State officers are required by law to be published, As to such newspapers, see Laws of N. Y. of 1885, ch. 262, § 1, Birdseye's Stats., 2807.

No. 360.

Application to superintendent of banks, by corporation, for leave to change place of business.

(Laws of N. Y. of 1892, chap. 689, § 29.)

To Hon. A. M., Superintendent of Banks of the State of New York :

The (name of corporation) a banking corporation organized — 1 —, pursuant to an act of the legislature of the State of New York, entitled "An act, etc.," passed — 1 — (and the acts amendatory thereof and supplementary thereto), hereby makes application pursuant to statute for leave to change its place of business from its present location in the (city) of —, in the county of —, to (stating place) ; the reasons for which proposed change are as follows (stating same) :

That notice of the intention of said corporation to make this application has been published according to law, and that the proofs of such publication are annexed to this application.¹

Dated — 1 —.

(Signatures of majority of the directors.)

A majority of the directors.

(Acknowledgment by directors, as in form No. 89.)

We, the undersigned, stockholders of the (name of corporation), holding (more than) two-thirds in amount of the stock of said corporation, and each the number of shares thereof set opposite our respective signatures hereto, do hereby assent (*) to the change of the location of the place of business of said corporation, mentioned in the above application, from the city of —, in the county of —, to (stating place).

Dated —, 1 —.

A. B. — shares.

C. D. — shares, etc.

(Acknowledgment by stockholders, as in form No. 89.)

¹ See, also, amendments to section 29 of chapter 689 of Laws of 1892, by chapter 39 of Laws of 1895.

No. 361.

Certificate of superintendent of banks consenting to change of location.

(Laws of N. Y. of 1892, chap. 689, § 30.)

An application dated —, 1—, having been duly made to the undersigned, superintendent of banks of the State of New York, which application is signed by (a majority of) the directors of the (name of corporation) a banking corporation duly incorporated under an act of the legislature of the State of New York, entitled "An act, etc.," passed — 1—, for leave to change the place of business of said corporation from its present location at the (city) of —, in the county of —, to (stating place), and said application being accompanied by the written assent of (more than) two-thirds in amount of the stockholders of said corporation, and by proof of the publication of notice of this application, as required by law.

And I being satisfied that there is no reasonable objection to such change of location, I do hereby make this certificate pursuant to statute, hereby authorizing, when the requirements of section 22 of chapter 689 of the Laws of New York of 1892 shall have been fully complied with, the said change of the location of the place of business of the said (name of corporation) on or after the — day of —, 1—, from its said present location to (stating place).

In witness whereof, I have hereunto set my hand and official seal this — day of —, in the year 1—, at the city of Albany, in the State of New York.¹

(Signature of Superintendent.)

Superintendent.

[L. S.]

1. See section 22 of chapter 689 of the Laws of New York of 1892, as to this certificate, which is to be filed in the office of the superintendent, and a certified copy with the clerk of the county in which the place of business of the corporation is located, and with the clerk of the county to which its place of business is changed, if in another county, and published once in each week for four successive weeks in the newspapers in which the notice of application was published. See note 1 to form No. 360.

No. 362.**Certificate of superintendent of banks of approval and of compliance with provisions of banking law.**

(Laws of N. Y. of 1892, chap. 689, § 30.)

I, A. B., superintendent of banks of the State of New York, do hereby certify, pursuant to statute, that the (name of corporation) a (*) banking corporation duly incorporated under the act of the legislature of said State, entitled "An act in relation to banking corporations," passed May 18, 1892, known as the banking law, has complied with the provisions of that act, and with all the requirements of law, and that it is authorized to transact within that State the business of banking as defined by that act, to-wit: to issue bills, notes or other evidences of debt for circulation as money, and to receive deposits of money and commercial paper, and to make loans thereon, and to discount bills, notes and other commercial paper, and to buy and sell gold and silver bullion, or foreign coins or bills of exchange (or, state other business authorized by section 2 of that act, as may be required), and that such business can be safely intrusted to it, and I do hereby approve of the transaction of such business by said banking corporation.¹

[I. S.]

A. B.,

Superintendent.

1. See section 30 of chapter 689 of the Laws of New York of 1892, as to this certificate, which is required by that section to be recorded in the office of the superintendent in a book to be kept by him for that purpose and a certified copy thereof filed in the office of the clerk of the county where the corporation is to have its principal office.

No. 363.**Certificate of superintendent in case of foreign corporations.**

(Laws of N. Y. of 1892, chap. 689, § 31.)

As in last form, No. 362, to (*), and from thence as follows: Foreign corporation incorporated under the laws of the State of —, for the purpose of carrying on the business of (stating same as specified in articles 5, 6 or 7 of chapter 689 of Laws of New York of 1892), has complied with all

the provisions of an act, etc. (describing same as in last form, No. 362), applicable to it, and with all the requirements of law, and that it is authorized to transact the business of (banking) within this State, to-wit (stating particulars as in form No. 362, or, otherwise stating business of corporation), and that such business may be safely intrusted to it.

In witness, etc. (as in form, No. 361).¹

(Signature of superintendent)

[SEAL.]

Superintendent.

1. See section 31 of chapter 689 of Laws of New York of 1892, as to this certificate and permission, which is to continue in force only for one year from its date, but may be renewed by the superintendent from time to time for a like period if satisfied that the corporation has complied with all the provisions of said chapter and with the requirements of law and that such business can be safely intrusted to it.

No. 364.

Appointment of superintendent as attorney for service of process.

(Laws of N. Y. of 1892, chap. 689, § 32.)

Know all men by these presents, that the (name of corporation), a (banking) corporation organized pursuant to (or, incorporated by) the laws of the State of —, does hereby appoint and constitute A. M., the superintendent of banks of the State of New York, its true and lawful attorney, upon whom all process in any action or proceeding by any resident of the State of New York against it, may be served with the same effect as if it existed in the State of New York, and had been lawfully served with process therein.

In witness whereof, the said (name of corporation) has caused its corporate seal to be hereunto affixed and these presents to be signed by its president, this — day of —, 1—. ¹

The (name of corporation)

[SEAL.]

by M. R., President.

Sealed and delivered in presence of

E. B.

(Acknowledgment or proof, as in forms Nos. 6, etc.)

1. See section 32 of chapter 689 of the Laws of New York of 1892, as to this appointment and as to duty of superintendent and his fees upon re-

ceiving process. The term process any suit, action or proceeding shall in this section includes any writ, be commenced by a resident of the summons, petition or order whereby State.

No. 365.

Certificate of incorporation of bank.

(Laws of N. Y. of 1892, chap. 689, § 40.)

We, the undersigned, for the purpose of becoming a bank, pursuant to the provisions of an act of the legislature of the State of New York, passed in the year 1892, and known as the banking law, do hereby make and acknowledge in duplicate the following certificate, and do hereby certify and state :

First. That the name by which such bank is to be known shall be the (insert name of corporation).

Second. That the operations of discount and deposit of said bank are to be carried on at the city (or, town, or village) of —, in the county of —, in said State.

Third. That the amount of the capital stock of said bank shall be — dollars,¹ which capital stock shall be divided into — shares, of — dollars each.

Fourth. That the names and places of residence of the stockholders of said bank, and the number of shares of the stock of said bank held by them respectively, are as follows : J. R., who resides in the city of —, in the county of —, and State of —, and is the holder of — shares of said stock ; P. B., who resides in the (town) of —, in the county of — and State of —, who is the holder of — shares of said stock, etc. (stating in like manner as to each stockholder).

Fifth. That said corporation shall commence on the — day of —, in the year 1—, and terminate on the — day of —, in the year 1—.

Sixth. That the number of the directors of said bank shall be (five),² and the names of the stockholders who shall be such directors for the first year of its incorporation, are as follows (naming them) :

[Seventh. (Here insert any provisions for an increase of the capital stock and of the number of persons forming the corporation from time to time as the stockholders may deem proper, and for the manner in which the stock of the corporation may be transferred, and for the number of directors necessary to constitute a quorum, and for the time when the annual election of directors shall be held.)]³ (†)

In witness whereof, we have hereunto set our hands this — day of — 1 — .⁴

(Signatures of corporators.)

(Acknowledgment, as in form No. 89.)

1. The amount of the capital stock shall not be less than \$50,000 in any city, village or town whose population does not exceed thirty thousand, and not less than \$100,000 elsewhere. (Laws of 1892, chap. 689, § 40, subd. 3.) Am'd 1893, ch. 408,

2. The number of directors shall not be less than five. (Id., subd. 6.) See also section 50 of same chapter as to qualifications of directors. For form of oath to be taken by directors, see form No. 375.

3. These provisions may or may

not be inserted. (Id., subd. 6, last clause.)

4. See section 40 of chapter 689 of Laws of New York of 1892, generally as to this certificate and its contents. See, also, § 41, id., as to amended certificate.

The above certificate is to be filed in the office of the clerk of the county where the bank is to be established, and a certificate in duplicate is to be filed in the office of the superintendent of banks. (Id., § 40.)

See note 2 to form No. 402, as to corporate name.

No. 366.

Certificate of individual banker's residence to be filed by him.

(Laws of N. Y. of 1892, chap. 689, § 42.)

I, A. B., an individual banker, transacting (or, intending to transact) banking business at the (city) of —, in the county of —, in the State of New York, do hereby certify, pursuant to and in compliance with the banking laws of said State, that I reside in the said (city) of —.¹

Dated —, 1 —.

A. B.

(Acknowledgment, as in form No. 89.)

1. See section 42 of chapter 689 of Laws of New York of 1892. The term "individual banker" has been

frequently used in our statutes and reports, and has acquired a definite meaning. It denotes a person who,

having complied with the statutory requirements, has received authority from the banking department to engage in the business of banking, subject to its inspection, supervision, and to the burdens imposed. Private bankers are persons or firms engaged in banking without having any special privileges or authority from the State. (*Perkins v. Smith*, 116 N. Y. 441; S. C., 27 N. Y. State Rep. 541.) See, also, Laws of New York of 1892, chap. 689, § 2, for definition of the term "individual banker."

No. 367.

Notice of change of place of residence by individual banker.

(Laws of N. Y. of 1892, chap. 689, § 42.)

Notice is hereby given, pursuant to the banking law of the State of New York, by the undersigned, A. B., an individual banker, now transacting banking business at the (city) of —, in the county of —, in the State of New York, that his place of residence has been changed from the said city to the (city) of —, in the county of —, in said State.¹

Dated —, 1—.

A. B.

(Acknowledgment, as in form No. 89.)

1. This notice is to be forthwith filed in the office of the superintendent of banks upon any change of residence by an individual banker. (Laws of N. Y. of 1892, chap. 689, § 42.) See, also, note 1 to last form, No. 366.

No. 368.

Agreement of consolidation of two or more banking corporations.

(Laws of N. Y. of 1892, chap. 689, § 45.)

This agreement made between the (name of corporation), party of the one part, and the (name of corporation), party of the other part, said parties being organized as banks, under the laws of the State of New York, and located in the same city (or, village, or, town), of said State, to-wit, in the (city) of —, in the county of —.

Witnesses :

First. That the said parties for the purpose of effecting a consolidation of said corporations, pursuant to the banking laws of the State of New York, do hereby enter into this agreement upon the following terms and conditions (stating same and the mode of carrying them into effect).

Second. That the name of the said new corporation shall be (insert name), and the duration thereof shall be (stating term).

Third. That the number of directors of said new corporation shall be —, and the names of the persons to constitute the first board of directors thereof are (stating them).

Fourth. That the time and place of holding the first election of directors of said new corporation shall be (stating same).

Fifth. The manner of converting the shares of each of such corporations into the shares of said new corporation shall be as follows (stating same).

Sixth. (Add such other details and provisions as may be deemed expedient, not inconsistent with law.)

In witness whereof we have hereunto set our hands and the seals of said corporations at the (city) of — this — day of —, 1—.¹

[SEALS.]

(Signatures of directors.)

(Acknowledgment, as in form No. 89.)

1. See section 45 of chapter 689 of the Laws of New York of 1892, as to this agreement. As to name of corporation, see note 2 to form No. 402. By chapter 382 of Laws of 1895, sections 45-48 of said chapter 689 are repealed, and new sections are enacted on the subject of merger.

No. 369.

Notice to stockholders of intention to consolidate two or more banking corporations.

(Laws of N. Y. of 1892, chap. 689, § 45.)

To A. B., etc., stockholders of the (name of corporation):

You are hereby notified that it is proposed by the directors of the (name of corporation) to consolidate said corporation

with the (name of corporation), pursuant to a resolution of the board of directors thereof, passed —, 1—, of which a copy is hereto annexed.¹

Dated —, 1—.

By order of the board of directors.

M. W.,

Secretary.

(Annex copy resolution.)

1. See section 45 of chapter 689 of Laws of New York of 1892, as to this notice and service thereof. For form of affidavit of service, see next form,

No. 370. The service must be made personally or by mail at least ten days previous to entering into the agreement to consolidate. See, also, note 1 to form No. 368.

No. 370.

Affidavit of service of notice of intention to consolidate two or more banking corporations.

(Laws of N. Y. of 1892, chap. 689, § 45.)

COUNTY OF —, ss.:

A. M., of —, being duly sworn, says, that on the — day of —, 1—, he served the annexed notice upon the following persons, stockholders of the (name of corporation), viz. (naming persons served), by delivering to and leaving with each of them personally a copy of said notice and of the resolution, a copy of which is thereto annexed:

That on the — day of —, 1—, he served the said notice upon the following persons, stockholders of said corporation, viz. (naming persons served), by mailing to each of them copies of said notice (*) and of said resolution at the post-office at the (city) of —, inclosed in a sealed wrapper and directed respectively to each of said persons at their respective places of residence, and paying the postage upon each copy so deposited.

That the persons so served are all the stockholders of said corporation.¹

A. M.

(Jurat, as in form No. 32.)

1. See section 45 of chapter 689 of Laws of New York of 1892. See, also, note 1 to last form, No. 369, and note therein referred to.

No. 371.**Consent of stockholders of banking corporation to consolidation.**

(Laws of N. Y. of 1892, chap. 689, § 45.)

We, the undersigned, stockholders of the (name of corporation), a corporation organized as a bank, under the laws of the State of New York, owning (more than) two-thirds in amount of the capital stock of the said corporation, do hereby consent, pursuant to the provisions of the banking law of said State, to the consolidation of said corporation with the (name of corporation), under an agreement entered into by the directors of said corporations under their respective seals for such consolidation, which agreement bears date on the — day of —, 1—.

In witness, etc. (as in form No. 365).¹

(Signatures of stockholders.)

In presence of

A. F., etc.

(Acknowledgment, etc., as in form No. 89.)

1. See section 45 of chapter 689 of Laws of New York of 1892, as to this consent, and see note 1 to form No. 368.

No. 372.**Affidavit of assent of stockholders owning two-thirds of stock of banking corporation to consolidation.**

(Laws of N. Y. of 1892, chap. 689, § 45.)

— COUNTY, ss.:

A. B., of —, being duly sworn, says, that he is the (name office) of the —, a corporation organized as a bank under the laws of the State of New York, which it is proposed to consolidate with the —, another corporation organized as a bank under said laws.

That an agreement has been entered into by the directors of said corporations under their respective corporate seals, for the consolidation of said corporations, as is required by the

banking laws of said State, and that the written consent of stockholders of said (naming corporation) owning (more than) two-thirds in amount of the capital stock of said (last) mentioned corporation to such agreement, as required by said law, has been obtained.¹

A. B.

(Jurat, as in form No. 32.)

1. See section 45 of chapter 689 of Laws of New York of 1892, as to this affidavit, which should be made by an officer of each corporation separately. See note 1 to form No. 368.

No. 373.

Certificate of superintendent as to value of the property of corporations to be consolidated.

(Laws of N. Y. of 1892, chap. 689, § 45.)

I, M. N., superintendent of banks of the State of New York, do hereby certify, pursuant to the statute hereinafter mentioned, that upon the presentation to me of an agreement entered into in compliance with the statute known as the banking law, by the directors of the (name of corporation), and of the (name of corporation), corporations organized as banks under the laws of the State of New York, and located in the same (city), to-wit, the city of —, in the county of —, under their respective corporate seals, for the consolidation of said corporations into a single corporation to be located in said (city), to be named the (insert new name), which agreement is duly proved (or, acknowledged), with satisfactory proof by affidavit of the assent thereto of stockholders of each of said corporations owning (more than) two-thirds in amount of the capital stock of each corporation, and of the service of notice upon each stockholder of said corporations respectively, personally or by mail (more than) ten days previous to entering into such agreement of the intention to consolidate said corporations, I have caused to be made an examination of the books, property and liabilities of such corporations, and that from the result of such examination I have determined the value, in my judgment, of the property of said corporations above and beyond such

debts and liabilities, and do certify that the value of such property of the said — amounts to the sum of — dollars, and that the value of the property of the said — amounts to the sum of — dollars.¹

In witness, etc. (as in form No. 361).

[SEAL.]

M. N.,
Superintendent.

1. See section 45 of chapter 689 of Laws of New York of 1892, as to this certificate. The value of the property as stated therein determines the capital stock of the new corporation. See, also, same section as to recording agreement, form No. 368, and the above certificate and the effect thereof, and see note 1 to form No. 368.

No. 374.

Dissent of stockholder to consolidation of banking corporation.

(Laws of N. Y. of 1892, chap. 689, § 48.)

I, M. B., a stockholder of the (name of corporation), owning — shares of the stock thereof, and not having assented to the consolidation thereof with the (name of corporation) under the agreement of the directors of said corporations, dated —, 1—, do hereby object to the said consolidation and demand payment for my said stock therein.¹

Dated —, 1—.

M. B.

1. See section 48 of chapter 689 of the Laws of New York of 1892, as to this dissent, which is to be made within twenty days of the recording of the agreement and certificate, forms Nos. 368, 373; and see same section as to payment for such stock by the new corporation, of the value thereof as determined by such certificate. See note 1 to form No. 368.

No. 375.

Oath of directors of banking corporation.

(Laws of N. Y. of 1892, chap. 689, § 51.)

— COUNTY, ss.:

A. B., of —, being duly sworn, says: That he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of the (name of corporation), of which

corporation he has been elected (or, appointed) a director, and will not knowingly violate, or willingly permit to be violated, any of the provisions of law applicable to such corporation, and that he is the owner in good faith and in his own right, of the number of shares of stock required by chapter 689 of the Laws of New York of 1892, known as the banking law, subscribed by him or standing in his name on the books of the said corporation, and that the same is not hypothecated, or in any way pledged as security for any loan or debt.

A. B.

(Jurat, as in form No. 32.)

1. Such oath is to be subscribed by the director making it, and certified by the officer before whom it is taken, and is to be immediately transmitted to the superintendent of banks, and filed and preserved in his office. (Laws of N. Y. of 1892, chap. 689, § 51.)

No. 376.

Authority of stockholders to change National bank to State bank.

(Laws of N. Y. of 1892, chap. 689, § 63.)

We, the subscribers, stockholders in the (name of corporation) a banking corporation located in the (city) of —, in the county of — and State of New York, owning two-thirds of its stock, do hereby vote to have said bank go into liquidation under and by authority of the forty-second section of the National Currency act, approved June 3, 1864, entitled "An act to provide a National Currency," etc., and for that purpose we hereby request and empower the directors of said bank, or a majority of them, to do and perform all necessary acts for us, and in our respective names, in furtherance of the object of this vote for closing up the affairs of said bank or banking association.

And we hereby authorize and empower said directors, or a majority of them, to reorganize said bank under the banking laws of the State of New York, agreeably to the provisions of an act of the legislature of said State, passed May 18, 1892, known as the banking law.

And in reorganizing said bank or banking corporation, full authority is hereby given to a majority of the said directors to execute the certificate of incorporation required by section 63 of said last-mentioned act.

The name to be assumed by the reorganized bank shall be the (state name).¹

And we, the subscribers, respectively and collectively agree to ratify and confirm all that said directors may legally do in our behalf.

Witness our hands and seals, with the number of shares owned by each of us expressed opposite our respective names.

| Signatures. | No. shares. |
|---------------|-----------------------------|
| A. M. (L. S.) | — shares. |
| C. N. (L. S.) | — shares, etc., as to each. |

(Acknowledgment or proof by signers, as in form No. 89.)

1. See note 2 to form No. 402, as to name of corporation.

No. 377.

Resolution of board of directors of bank in favor of change of National bank to State bank.

(Laws of N. Y. of 1892, chap. 689, § 63.)

Whereas, a vote of stockholders owning (more than) two-thirds of the stock of the (name of corporation), has this day been presented to this board, for going into liquidation and closing up the affairs of said corporation agreeably to section 42 of the National Currency act, approved June 3, 1864: Therefore, resolved, that we proceed at once to comply with said vote, and that we take all necessary steps for the execution of the same. That our cashier notify the comptroller of the currency of this vote, and send him a certificate of the same, under the seal of this association, and publish the same as required by law. That our circulation be retired or provided for, and the bonds pledged for its redemption be redeemed agreeably to the provisions of said National Currency act, or any act or acts amendatory of the same. And a majority of this board, having simultaneously herewith executed and filed the certificate of incorporation

authorized by an act of the legislature of the State of New York, passed May 18, 1892, and known as the banking law, whereby a State banking corporation was organized as the (insert name of corporation), as required by section 63 of said banking law, to take the place of this National association. Resolved, that all the effects and assets of every kind, real and personal, be passed over and transferred, and hereby are passed over and transferred to said (name of new corporation), organized to take the place of the said National association.

(Signatures of directors.)

No. 378.

**Certificate of incorporation of banking corporation changing
from National to State bank.**

(Laws of N. Y. of 1892, chap. 689, § 63.)

Whereas, the (insert name of corporation), a corporation organized and doing business under the act of Congress "to provide a National currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, was, under the provisions of said act of Congress, authorized to dissolve its organization as such National Banking Association ;

And whereas, said National Banking Association has taken the action required by said act of Congress, to effect such dissolution :

Now, therefore, we, the subscribers, constituting a majority of the board of directors of the (name of corporation), having been authorized in writing by the owners of two-thirds of the capital stock of said bank, to execute the certificate of incorporation required by section sixty-three of chapter six hundred and eighty-nine of the laws of eighteen hundred and ninety-two of the State of New York, known as the banking law, do make and execute the following certificate of incorporation :

CERTIFICATE OF INCORPORATION OF THE ——— BANK
OF ———,

made and executed under and pursuant to an act of the legislature of the State of New York, passed May 9, 1892, known as the banking law, and under and by the authority in writing of the owners of (more than) two-thirds of the capital stock of the ——— bank of ——— (which authority is hereby declared to be and is in the following words).

(Here insert such authority as in form No. 376.)

Witnesseth :

First. That the name by which such bank is to be known shall be the (insert name of corporation).

Second. That (insert here the second clause contained in form No. 365).

Third. That (insert here the third clause contained in form No. 365).

Fourth. (Insert here the fourth clause contained in form No. 365).

Fifth. That said corporation shall commence simultaneously with the dissolution of the (name of former corporation) of, etc., to-wit, on the ——— day of ———, 1——, and shall terminate on the ——— day of ———, 1——.

Sixth. (Insert here the sixth clause contained in form No. 365.)¹

Seventh. (Here insert the matters contained in the seventh clause of form No. 365, the names of the directors for the first year being those of the directors of the dissolved corporation at the time of such dissolution.)

In witness whereof, we, a majority as aforesaid of the board of directors of the ——— bank of ———, have hereunto set our hands and seals this ——— day of ———, A. D., 1——.²

(Signatures of directors.)

(Acknowledgment or proof, as in form No. 89.)

1. The directors of the dissolved corporation at the time of such dissolution shall be the directors of the bank created in pursuance hereof until the first annual election of directors thereafter, and shall have power to take all necessary measures to perfect its organization, and to adopt such regulations concerning its business and management as may

be proper and just and not inconsistent with law. (Laws of 1892, chap. 689, § 63.)

2. See notes to form No. 365, and see section 63 above cited as to this certificate of incorporation, a copy of which is to be filed in the office of the superintendent of banks, with proof that the original is duly recorded in the office of the clerk of the county where any office of such corporation shall be located.

No. 379.

Notice to comptroller of the currency that a vote of stockholders of National bank to go into liquidation and be closed has been taken.

It is hereby certified that a vote of the shareholders owning two-thirds of the stock of the (name of corporation), of —, to go into liquidation and be closed has been taken.

Witness the corporate seal of said association hereto affixed and the signature of its president, hereto subscribed this — day of —, 1—.

[L. S.]

M. D.,
President.

To the Comptroller of the Currency, Washington, D. C.:

SIR:

Notice is hereby given to you of the fact certified under the seal of the (name of corporation), of —, by the president of said association as above, that a vote of the shareholders owning two-thirds of the stock of said association, to go into liquidation and be closed, has been taken.

By order of the board of directors.

A. B.,
Cashier.

No. 380.

Notice to be published of vote of shareholders owning two-thirds of stock of National bank, to go into liquidation and close up its affairs.

(U. S. Rev. Stats., § 5220.)

The (name of corporation), of —.

Notice is hereby given that a vote of the shareholders owning two-thirds of the stock of this association to go into

liquidation and be closed, has been taken, and that this association is closing up its affairs accordingly.

And the holders of the notes of this association and other creditors thereof are hereby notified to present said notes and other claims against this association for payment at the banking-house of said association in the (city) of —.

Dated at —, 1—.

By order of the board of directors.¹

C. D.,
Cashier.

This bank has reorganized as a State institution and will continue business as usual.

1. See section 5220 of United States Revised Statutes (§ 42 of act of 1864), that any National banking association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock, and see section 5221, id., as to the above notice and its publication, which is to be made for a period of two months in a newspaper published in the city of New York, and also in a newspaper published in the city or town in which the association is located, or, if no newspaper is there published, then in the newspaper published nearest thereto.

No. 381.

Assent of depositors to the transfers of their deposits.

(Name of corporation.)

(Date) —.

DEAR SIR: We, this day, close up the affairs of this bank, and organize as the (name of new corporation). We pass over and transfer all our effects, including your deposit, from the National to the State association, and if agreeable to you, please add your name to the approval at foot, and return this in the inclosed envelope by mail, as early as convenient; and hereafter strike out "National" in drawing your checks.¹

Very respectfully,

C. D.,
Cashier.

Approved.

(Signature of depositor.)

1. The dissolution of a National banking association is not complete until the necessary action has been had for the redemption of its circulating notes, either by actually redeeming them and surrendering them

to the comptroller of the currency, or by depositing an amount of treasury notes with him, adequate to their redemption. (National Banking Association, 13 Op. Attys.-Gen. 56.) The resolution to liquidate is not a dissolution. (Ordway v. Central National Bank, 47 Md. 217.)

better to have the approval of the depositor to the continuing of the deposit, as a precaution against the interference of the comptroller of the currency. This assent being had, leaves only the circulation to be adjusted of all the assets of the old bank.

Under these decisions it is deemed

No. 382.

Power of attorney for distant stockholders if their assent is needed.

I, —, the subscriber, own — shares in the capital stock of the — National — Bank of —. And whereas, it is contemplated to have said bank go into liquidation under authority of the National Currency act, approved June 3, 1864, and thereupon to reorganize as a bank under the banking laws of the State of New York, agreeably to the provisions of an act passed by the legislature of the State of New York, May 18, 1892, and known as the banking law: Therefore, to facilitate and further the aforesaid object, I, the subscriber, do hereby constitute and appoint —, my true and lawful attorney, for me, and in my name and behalf, to execute all necessary papers and authority for the liquidation and closing of the aforesaid — Bank of —, and for reorganizing as a banking association under the laws of the State of New York above referred to. And for that object, to do and perform all acts and deeds as fully and perfectly as I might or could do in person. And I hereby vote in favor of said liquidation and reorganization, and agree to ratify and confirm all necessary acts and doings of my said attorney in the premises.

Witness my hand and seal this — day of —, A. D.
I—.

(Signature.)

L. I.

(Acknowledgment by stockholder, as in form No. 89.)

ARTICLE 2.

FORMS RELATING TO SAVINGS BANKS.

(Laws of N. Y. of 1892, chap. 689, art. 3.)

No. 383. Report by savings bank to superintendent of banks of dormant accounts.

- 384. Certificate of incorporation of savings bank.
- 385. Notice of intention to organize a savings bank.
- 386. Certificate of authorization to open office for deposit of savings.
- 387. Order of superintendent of banks extending time for organization of savings bank.
- 388. Copy of record of meeting called to determine as to necessity, etc., of dissolution of solvent savings bank, certified by president, etc.
- 389. Notice to creditors, etc., of banking corporation, of the adoption of resolution, form No. 388.

No. 383.**Report by savings bank to superintendent of banks of dormant accounts.**

(Laws of N. Y. of 1892, chap. 689, § 28.)

To the superintendent of banks of the State of New York:

The (name of corporation) hereby makes the following report, pursuant to the provisions of section 28 of chapter 689 of the Laws of New York of 1892, concerning such accounts of depositors of amounts of five dollars or more, as have been dormant for twenty-two years and upwards, from the first day of May, 1—; that is, accounts which have not been increased or diminished by deposits or withdrawals, exclusive of interest credits, to-wit .

| Name of depositor. | Sum to the credit of account. | Date of original deposit. | Last known place of residence of depositor. | His or her occupation. | Date of birth. | Nationality. | Parents' name, if known. | Date when bank discontinued the crediting of interest on account. | Additional data. | Date when paid or became active account. |
|--------------------|-------------------------------|---------------------------|---|------------------------|----------------|--------------|--------------------------|---|------------------|--|
| | | | | | | | | | | |

The (name of corporation).

by L. B., its (Treasurer.)

STATE OF NEW YORK, } ss. :
 County of —, }

A. B. and C. D., of —, being, severally, duly sworn, say, and each for himself says: That said A. B. is the (president), and said C. D. is the treasurer of the —, a savings bank (or, institution for savings), organized under the (banking law of the State of New York). That the foregoing report is true to the best of deponents' knowledge, information and belief.

(Jurat, as in form No. 32.)

A. B.

C. D.

1. See section 28 of chapter 689 of Laws of New York of 1892, as to this report and its contents.

No. 384.

Certificate of incorporation of savings bank.

(Laws of N. Y. of 1892, chap. 689, § 100.)

We, the undersigned, in order to become a savings bank, pursuant to the provisions of article 3 of chapter 689 of the Laws of New York of 1892, known as the banking law, do hereby execute and acknowledge the following certificate in duplicate, and do hereby certify and set forth as follows:

First. That the said corporation shall be known by the name of (insert name of corporation).

Second. That the business of said corporation shall be transacted in (the — ward of) the (city) of —, in the county of —, and State of New York.

Third. That A. B., who resides at (number —, — street), in the city of —, in the State of (New York), by occupation a —, and whose post-office address is (stating same); C. D., who resides, etc. (as above, and so on as to each member),¹ are the members of said corporation.

Fourth. That each member of said corporation will accept the responsibilities and faithfully discharge the duties of a

trustee in said corporation, when authorized according to the provisions of law.

In witness, etc. (as in form No. 390).²

(Signatures and seals.)

(Acknowledgment, as in form No. 89.)

1. The name, residence, and, if in a city, the street and number, occupation and post-office address of each member must be stated. (Laws of N. Y. of 1892, chap. 689, § 100, subd. 3.)

2. See section 100 of chapter 689 of Laws of New York of 1892, as to this certificate, which is to be executed and acknowledged in duplicate, one of which shall be filed in the office of the clerk of the county, and the other in the office of the superintendent of banks, within sixty days after its acknowledgment.

See, also, section 132 of same chapter, as to charters and acts of incorporation of existing savings banks.

· No. 385.

Notice of intention to organize a savings bank.

(Laws of N. Y. of 1892, chap. 689, § 101.)

Notice is hereby given, pursuant to statute, that A. B., C. D., etc. (stating names of the proposed incorporators), propose to organize, pursuant to the provisions of article 3 of chapter 689 of the Laws of New York of 1892, a savings bank, to be named the (stating proposed name), and to be located at (stating location as in certificate form No. 384).¹

Dated —, 1—.

1. See section 101 of chapter 689. Laws of New York of 1892, as to this notice, which is required by that section to be published at least once a week for four weeks previous to filing the certificate of incorporation in at least one newspaper of the largest circulation published in the city, village or town where such savings bank is proposed to be located, or, if there is no newspaper published

therein, then some newspaper published in the county; if none in the county, in an adjoining county; and if there is any savings bank organized and doing business in such county, a copy of such notice shall also be sent to every such savings bank so organized and doing business. at least fifteen days before the filing of such certificate.

As to name of corporation, see note 2 to form No. 402.

No. 386.

Certificate of authorization to open office for deposit of savings.

(Laws of N. Y. of 1892, chap. 689, § 104.)

A certificate of incorporation of the (name of bank) in due form and duly executed according to the provisions of article 3 of chapter 689 of the Laws of New York of 1892, and accompanied by evidence satisfactory to me of the proper publication and service in good faith of the notice, required by section 101 of that article to be published and served, having been received by me on the — day of —, 1—, and I being satisfied from my own knowledge and from information gained concerning the several matters specified in section 103 of said article, that the organization of the said savings bank as proposed in said certificate will be a public benefit :

I do hereby authorize A. B., etc. (naming persons),¹ to open an office for the deposit of savings at, etc. (designating same), subject to the provisions of said chapter 689 of the Laws of 1892.

In witness, etc. (as in form No. 361).²

[L. S.]

J. P.,
Superintendent.

1. This authorization is to be issued to the persons named in the certificate of incorporation or to a portion of them, together with such other persons as a majority of those named in such certificate shall in writing approve. No person shall be named in the certificate of authorization, who shall not have made and acknowledged the declaration prescribed in subdivision 4 of section 100 of chapter 689 of 1892. (Laws of N. Y. of 1892, chap. 689, § 104.)

2. See section 104 of chapter 689 of Laws of New York of 1892, as to this certificate and the duty of the superintendent in regard thereto.

Also, as to his action in case he shall not be satisfied that the establishment of a savings bank as proposed in any certificate filed by him is expedient or desirable.

As to effect of filing certificate of authorization see same chapter, section 105.

By section 106, id., every such corporation which shall not organize and commence business within one year after such certificate has been filed, shall forfeit its rights and privileges as a corporation under that chapter. As to extension of this time by superintendent see same section; and next form, No. 387.

No. 387.**Order of superintendent of banks, extending time for organization of savings bank.**

(Laws of N. Y. of 1892, chap. 689, § 106.)

Satisfactory cause therefor having been shown to me, the superintendent of banks of the State of New York, I do hereby, pursuant to section 106 of chapter 689 of the Laws of New York of 1892, extend the term within which the (name of corporation), a savings bank duly incorporated pursuant to said chapter, and to which bank a certificate of authorization has been issued by me and filed according to law, on the — day of —, 1—, may organize and commence business, to the — day of —, 1—.¹

Witness my hand and official seal this — day of —, 1—.

[L. S.]

A. B.,
Superintendent.

1. This extension shall not exceed one year. The order is to be transmitted to the county clerk of the county in which such savings bank is to be located, who shall file the same, together with its certificate of incorporation and certificate of authorization. (Laws of N. Y. of 1892, chap. 689, § 106.)

No. 388.**Copy record of meeting, called to determine as to necessity, etc., of dissolution of solvent savings bank, certified by president, etc.**

(Laws of N. Y. of 1892, chap. 689, § 133.)

A meeting of the trustees of the (name of corporation), called for the purpose of determining as to the necessity or expediency of closing the business of such corporation, was held at, etc., on the — day of —, 1—, of which meeting all the trustees of said corporation had due notice, at which meeting the following trustees were present, viz.: A. B., etc., naming them.

A resolution was offered by said A. B. as follows:

Resolved, That it is deemed (necessary and) expedient that the (name of corporation) shall close its business and pay the moneys due depositors and creditors, and surrender its corporate franchise, pursuant to the provisions of article 3 of chapter 689 of the Laws of New York of 1892.

A vote on such resolution was taken by ayes and noes, and thereupon the following trustees (naming them) voted in the affirmative, and the following trustees voted in the negative (naming them), the affirmative vote thereupon being (more than) two-thirds of the whole number of said trustees.

We, the undersigned, president and secretary of the (name of corporation), do hereby certify that the foregoing (or, annexed) record is a copy of the record of the proceedings of a meeting of the trustees of the said corporation, held at the time and place and for the purpose therein specified, of which all the trustees of said corporation were duly notified.

Witness our hands and the seal of said corporation, this — day of —, 1—.¹

[L. S.]

A. M.,
President.

M. N.,
Secretary.

1. See section 133 of chapter 689 that section to be filed in the banking department of Laws of New York of 1892, as to this record, which is required by

No. 389.

Notice to creditors, etc., of banking corporation of the adoption of resolution, form No. 388.

(Laws of N. Y. of 1892, chap. 689, § 133.)

Notice is hereby given, pursuant to the provisions of section 133 of article 3 of chapter 689 of the Laws of New York of 1892, to the depositors and creditors of the (name of corporation), a savings bank, organized pursuant to the laws of New York, located and doing business at the (city) of —, in the county of —, in said State, that at a meeting of the trustees of said corporation, held according to law, at, etc., on, etc., a resolution was passed declaring the de-

termination of such trustees that it was (necessary and) expedient to close the business of such corporation, and to pay the moneys due its depositors and creditors and to surrender its corporate franchise.¹

Dated —, 1—.

By order of the trustees.

C. M.,
Secretary.

1. See section 133 of chapter 689 service thereof. See section 134, id., of the Laws of New York of 1892, as to further proceedings to effect as to this notice and publication and dissolution.

ARTICLE 3.

FORMS RELATING TO TRUST COMPANIES.

(Laws of N. Y. of 1892, chap. 689, art. 4.)

No. 390. Certificate of incorporation of trust company.

391. Direction for publication of notice of intention to organize trust company.

392. Notice of intention to organize trust company.

393. List of stockholders of trust company to be filed with superintendent of banks before entering upon active duties.

No. 390.

Certificate of incorporation of trust company.

(Laws of N. Y. of 1892, chap. 689, § 150.)

We, the undersigned, for the purpose of forming a trust company, pursuant to the provisions of article 4 of chapter 689 of the Laws of New York of 1892, passed May 18, 1892, and known as the banking law, do hereby execute and acknowledge the following organization certificate, in duplicate, and hereby certify and specifically state as follows:

First. That said corporation shall be known by the name of the (stating name).

Second. That the business of said corporation is to be transacted at the (city) of —, in the county of —, and State of New York.

Third. That the amount of the capital stock of said corporation shall be (five hundred thousand) dollars, which

capital stock shall be divided into — shares of — dollars each.

Fourth. That the name, residence and post-office address of each member of said corporation is as follows: A. B., who resides at the (city) of —, in the county of —, and State of (New York), and whose post-office address is (stating same); C. D., who resides, etc. (as above); E. F., who resides, etc. (stating in like manner as to each member).

Fifth. That the term of the existence of said corporation shall be (fifty) years.¹

Sixth. That each member of said corporation will accept the responsibilities and faithfully discharge the duties of a director therein, if elected to act as such, when authorized by the provisions of said chapter 689 of the Laws of New York of 1892.

In witness whereof, we have, etc. (as in form No. 365, adding after word "hands" the words "and seals.")²

(Signatures and seals of members.)

(Acknowledgment, as in form No. 89.)

1. Not to exceed fifty years.

2. See section 150 of chapter 689 of the Laws of New York of 1892, as to this certificate, which is required by that section to be filed within sixty days after its acknowledgment, one in the office of the county clerk of the county wherein such trust com-

pany is proposed to be located, and one in the office of the superintendent of banks of the State, and see amendment to that section by chapter 314 of Laws of 1893.

See section 156 of the same chapter as to powers of trust companies organized under that chapter.

No. 391.

Direction for publication of notice of intention to organize trust company.

(Laws of N. Y. of 1892, chap. 689, § 151.)

I, —, superintendent of banks of the State of New York, do hereby designate the (name of newspaper), a newspaper published in the city of —, in the county of —, as the paper in which shall be published, according to law, a notice of the intention to organize the (name of corporation), as a trust company, to be located in said city.¹ A. M.,

Dated —, 1—.

Superintendent.

1. See section 151 of chapter 689 of Laws of New York of 1892, as to this direction, and as to name of corporation, see note 2 to form No. 402.

No. 392.

Notice of intention to organize trust company.

(Laws of N. Y. of 1892, chap. 689, § 151.)

Notice is hereby given of the intention of A. B., etc., as corporators, to organize a trust company, pursuant to article 4 of the banking law of the State of New York, said company to be called the (name of corporation), and to be located in the city of —, in the county of —, and State of New York.¹

Dated —, 1—.

1. See section 151 of chapter 689 in the case of savings banks, form of the Laws of New York of 1892, as No. 386, and the proceedings thereupon are the same as under that form. to this notice and publication and service thereof. The form of authorization certificate is, substantially, as See, also, amendment to said section 151 by chapter 313 of Laws of 1893.

No. 393.

List of stockholders of trust company to be filed with superintendent of banks, before entering upon active business.

(Laws of N. Y. of 1892, chap. 689, § 155.)

The following is a list of the stockholders of the (name of corporation), filed pursuant to law, by said corporation, with the superintendent of banks of the State of New York, before entering upon active business, giving the name, residence, post-office address, and number of shares of stock held by each of them respectively, to-wit :¹

| Name of stockholder. | Place of residence. | Post-office address. | Number of shares of stock held by them respectively. |
|----------------------|---------------------|---------------------------|--|
| A. B. | Albany, N. Y..... | — — street, Albany, N. Y. | 50 |
| C. D. | New York City... | — — street, New York City | 25 |

and so on.

STATE OF NEW YORK, }
 — county, } ss. :

M. N., of —, and C. P., of —, being duly sworn, say :
 That the said M. N. is the president, and the said C. P. is
 the secretary of the (name of corporation). That the fore-
 going list of stockholders of the said corporation is a correct
 list thereof, and correctly states the names, residences, post-
 office address, and number of shares held by them respect-
 ively.

(Jurat, as in form No. 32.)

M. N.
 C. P.

1. See section 155 of chapter 689 this list, and its verification and
 of Laws of New York of 1892, as to filing.

ARTICLE 4.

FORMS RELATING TO BUILDING AND MUTUAL LOAN CORPORATIONS.

(Laws of N. Y. of 1892, chap. 689, art. 5.)

No. 394. Certificate of incorporation of building and mutual loan cor-
 poration.

No. 394.

**Certificate of incorporation of building and mutual loan cor-
 poration.**

(Laws of N. Y. of 1892, chap. 689, § 170.)

We, the undersigned, in order to become a corporation for
 the purpose of accumulating a fund for the purchase of real
 property, etc. (stating all or any of the purposes mentioned
 in section 170 of chapter 689 of the Laws of 1892), do hereby
 make and acknowledge the following certificate of incorpo-
 ration, hereby certifying and setting forth as follows, viz. :

First. That the name of said corporation shall be the
 (insert name).

Second. That the principal business office of said corpora-
 tion shall be located at the (city) of —, in the county of
 —, and State of New York.

Third. That the regular meetings of said corporation shall be held (stating times and places), and special meetings thereof may be called (stating how).

Fourth. — shall be a quorum for the transaction of business at the meetings of said corporation.

Fifth. Members of said corporation shall be admitted (stating manner) and the qualifications of such members shall be as follows (stating same).

Sixth. There shall be the following officers (and directors), (or, attorneys), of said corporation, viz.: (stating them), who shall be chosen (stating manner).

Seventh. The duties of such officers and directors (or, attorneys), shall be as follows, that of the — (stating name of officer and his duties, and in like manner stating the name of each officer and his duties), and they may be removed or suspended from office (stating manner of such removal or suspension).

Eighth. A. B. shall be the — of said corporation, and C. D. the — for its first year and until others are chosen in their places; M. N., etc., shall be the directors of said corporation for its first year, and until others are chosen in their places.

Ninth. The entrance fee of new members and new shares shall be (stating same).

Tenth. The amount of each share of said corporation shall be (stating same).

And so on, stating all the matters required by the twenty-two subdivisions of section 170 of chapter 689 of 1892, and by sections 171 and 173 of that chapter.

In witness, etc. (as in form No. 365).¹

(Signatures of corporators.)

(Acknowledgment, as in form No. 89.)

I hereby approve of the foregoing certificate of incorporation of the (name of corporation).

Dated —, 1—.

A. M.,

Superintendent of Banks.

1. See sections 170, 171 and 173 of contents of this certificate, which chapter 689 of Laws of 1892, as to must be approved by the superin-

tendent of banks, and filed in the office of the clerk of the county in which such corporation shall have its principal business office, and a certified copy thereof must be filed in the office of such superintendent. Thereupon the persons who have subscribed such certificate and such other persons as shall become members of the corporation, and their

successors, shall be a corporation by the name specified in such certificate, and see section 175 of same chapter, as to the manner in which existing corporations may become entitled to the benefit of article 5 of that chapter.

See, also, *People v. Troy House Company* (44 Barb. 625); *The Concordia Savings and Aid Association v. Read* (93 N. Y. 474), and as to name of corporation, see note 2 to form No. 402.

ARTICLE 5.

FORMS RELATING TO CO-OPERATIVE LOAN ASSOCIATION.

(Laws of N. Y. of 1892, chap. 689, art. 6.)

No. 395. Certificate of incorporation of co-operative loan association.

No. 395.

Certificate of incorporation of co-operative loan association.

(Laws of N. Y. of 1892, chap. 689, § 180.)

We, the undersigned, in order to become a corporation, pursuant to the provisions of article 6 of chapter 689 of the Laws of New York of 1892, passed May 18, 1892, and known as the banking law, for the purpose of encouraging industry, frugality, home building and savings among its members, the accumulation of savings, the loaning of such savings to its members, and the repayment to each member of his savings when they have accumulated to a certain sum, or at any time when he shall desire the same, or the corporation shall desire to repay the same,¹ do hereby make and acknowledge the following certificate of incorporation and do certify and state as follows:

First. That the name of said corporation shall be The Co-operative Savings and Loan Association of, etc. (or, other name which shall contain as a part thereof the words "Co-operative Savings and Loan Association.")

Second. That said corporation is formed for the purposes hereinabove expressed and contained.

Third. That the principal place of business of said corporation shall be located at the (city) of —, in the county of —, and State of New York.

Fourth. That the minimum number of shares of stock which said corporation shall have outstanding at any one time shall be — shares.

In witness, etc. (as in form No. 365.)

(Signatures of corporators.)

(Acknowledgment, as in form No. 89, and approval by superintendent of banks, as in last form, No. 394.)

1. Such certificate must be approved by the superintendent of banks, and filed and recorded in his office, and a certified copy thereof filed in the office of the clerk of the county where its principal business office is to be located, and upon the filing of such certificate and the certified copy thereof, the persons named therein, their associates and successors shall become, and be a corporation by the name specified therein. (Laws of N. Y. of 1892, chap. 689, § 180.)

As to by-laws to be adopted by the corporation, see section 181 of the same chapter, and as to name of corporation, see note 2 to form No. 402.

ARTICLE 6.

FORMS RELATING TO MORTGAGE, LOAN AND INVESTMENT CORPORATIONS.

(Laws of N. Y. of 1892, chap. 689, art. 7.)

No. 396. License by superintendent of banks to foreign mortgage, etc., company, to transact business within the State.

397. Certificate to be filed by such mortgage, loan or investment company.

398. Designation of superintendent of banks as attorney by such mortgage, loan or investment corporation.

No. 396.

License by superintendent of banks to foreign mortgage company to transact business within the State.

(Laws of N. Y. of 1892, chap. 689, § 200.)

It having appeared to my satisfaction from an examination made by me personally [or, by A. B. (and C. D.), a competent person (or, competent persons)], appointed by me, as required by section 201 of article 7 of chapter 689 of the Laws of New York, passed in the year 1892, and known as the banking law, into the condition, business methods, resources and affairs generally of the (stating name of company, association, etc.), of (stating location, etc., of company, etc.), and from the statement or report submitted by

such company, etc., pursuant to the requirements of the said section, that (its) affairs are being conducted in a safe and lawful manner, I, M. N., superintendent of banks of the State of New York, do hereby, pursuant to said article, license and permit the said (name of company, etc.), to transact business in this State for the term of one year from the date hereof.

Witness my hand and official seal at the city of Albany, this — day of —, 1—.¹

[L. S.]

(Signature of superintendent.)

1. See sections 200-202 of chapter filed by the company, see section 689 of Laws of N. Y. of 1892, as to 203 of same chapter, and form No. this license, and for certificate to be 397.

No. 397.

Certificate to be filed by foreign mortgage, loan or investment company.

(Laws of N. Y. of 1892, chap. 689, § 203.)

The (name of company, etc.), does hereby certify, pursuant to section 203 of chapter 689 of the Laws of New York of 1892, that the name and business address of every person, association, corporation, company, firm or others, who act or propose to act in this State as the agent or representative of said company, is as follows:

| Name. | Business address. |
|------------|-------------------|
| A. C. | — —. |

Witness my hand and (the) seal of said (corporation) at —, this day of —, 1—.¹

The —.

[L. S.]

by A. T., President.

1. See section 203 of chapter 689 of Laws of New York of 1892, as to this certificate, which is to be filed in the office of the superintendent of banks, within thirty days after being authorized to transact business in that State. And in case of any change in any such representative. an amended certificate shall be forthwith filed.

No. 398.**Designation of superintendent of banks as attorney, by foreign mortgage, loan and investment corporation.**

(Laws of N. Y. of 1892, chap. 689, § 205.)

Know all men by these presents, that the (name of company, etc.), has appointed, and doth hereby appoint M. N., the superintendent of banks of the State of New York, its true and lawful attorney, upon whom all process in any action or proceeding, by any resident of the State of New York against said company (etc.), may be served with the same effect as if it were a domestic corporation, and had been lawfully served with process in said State.

Witness my hand and (the) seal of (said corporation), at, etc., this — day of —, 1—.¹

[L. S.]

The (name of corporation, etc.)
by A. B., its president.

1. A certificate of such appointment, duly certified and authenticated, is required by section 205 of chapter 689 of Laws of New York of 1892, to be filed in the office of the superintendent of banks, and copies certified by him or his deputy shall be sufficient evidence thereof. See, also, same section as to effect of such appointment, etc.

ARTICLE 7.**FORMS RELATING TO SAFE DEPOSIT COMPANIES.**

(Laws of N. Y. of 1892, chap. 689, art. 8.)

No. 399. Certificate of incorporation of safe deposit company.**400. Notice of election of directors of safe deposit company.****401. Notice to hirer of safe in safe deposit company, before opening safe, rent thereof being overdue for three years.****No. 399.****Certificate of incorporation of safe deposit company.**

(Laws of N. Y. of 1892, chap. 689, § 210.)

We, the undersigned, in order to become a corporation pursuant to the provisions of article 8 of chapter 689 of the

Laws of New York of 1892, known as the banking law, for the purpose and business hereinafter stated, do hereby make and acknowledge the following certificate, and certify and state as follows:

First. That the corporate name of said corporation shall be (stating same).

Second. That the business of said corporation shall be as follows, viz.: The taking and receiving upon deposit, as bailee for safe keeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, securities and valuable papers of any kind, and valuable personal property, and guaranteeing their safety upon such terms and for such compensation as may be agreed upon by it and the respective bailors thereof; and the letting out vaults, safes and other receptacles for the uses and purposes of such corporation.

Third. That the amount of the capital stock of said corporation is — dollars,¹ to consist of — shares of — each.

Fourth. That the term of the existence of said corporation shall be — years.²

Fifth. That there shall be — directors³ of said corporation, and the names, residences and post-office addresses of the directors who shall manage its concerns for the first year, are as follows:

| Name. | Residence. | Occupation. | Post-office address. |
|------------|---------------------|---------------|----------------------|
| A. B..... | Albany, N. Y..... | Banker..... | — Albany, N. Y. |
| C. D. | New York City,..... | Merchant..... | — New York City. |

etc., stating in like manner as to each.

Sixth. That the operations of said corporation are to be carried on at the (city) of —, in the county of —, and State of New York.

In witness whereof, etc. (as in form No. 365).⁴

(Signatures of corporators.)

(Acknowledgment, as in form No. 89.)

I hereby approve of the foregoing certificate pursuant to the provisions of section 210 of chapter 689 of the Laws of New York of 1892.

Dated —, 1—.

A. M.,

Superintendent of Banks.

1. Not to exceed one million, nor to be less than one hundred thousand dollars, except in cities or villages of less than one hundred thousand inhabitants, in which the capital shall not be less than ten thousand dollars. (Laws of N. Y. of 1892, chap. 689, § 200.)

2. Not to exceed fifty years. (Id., § 200.)

3. The affairs of such corporation shall be managed by not less than five nor more than thirteen directors, who shall be stockholders, and a majority of whom shall be citizens of the State of New York. (Id., § 201.)

4. See section 200 of chapter 689 of Laws of New York of 1892, generally as to this certificate and its contents. No such corporation shall commence or transact business until the whole amount of its capital stock shall have been paid in; nor make any loan or advance on any property left with it for storage or safe keeping. The certificate is to be filed in the office of the clerk of the county in which its principal place of business is to be located, and a duplicate thereof in the office of the superintendent of banks (See same section). See note 2 to form No. 402 as to name of corporation.

No. 400.

Notice of election of directors of safe deposit company.

(Laws of N. Y. of 1892, chap. 689, § 211.)

Notice is hereby given that the annual election of the directors of the (name of corporation) will be held at, etc., on etc., at — o'clock in the — noon.¹

Dated —, 1—.

By order of the board of directors.

M. F.,

Secretary.

1. By section 211 of chapter 689 of Laws of New York of 1892, this notice is required to be published not less than ten days previous to the election in a newspaper in the town or city in which the operations of

such corporation shall be carried on, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy.

No. 401.

Notice to hirer of safe in safe deposit company before opening safe, rent thereof being overdue for three years.

(Laws of N. Y. of 1892, chap. 689, § 214.)

To L. M.:

You are hereby notified, pursuant to the provisions of section 214 of chapter 689 of Laws of New York of 1892, known as the banking law, that the amount of — dollars (with interest thereon from —, 1—), is due from you for the use of a box (or, safe), in the vaults of the (name of corporation), and that if such amount is not paid within sixty days from the date of this notice, the said corporation will then cause such box (or, safe) to be opened in the presence of its president, or secretary, or treasurer, and of a notary public not an officer or in the employ of said corporation, and the contents thereof, if any, to be sealed up by such notary public in a package upon which such notary public will distinctly mark your name and address being that of the person in whose name such box (or, safe) stands upon the books of the said corporation, and the estimated value thereof; and the package so sealed and addressed, when marked for identification by such notary public, will be placed by such notary public in one of the general safes or boxes of the said corporation.¹

Dated —, 1—.

Yours, etc.,

The (name of corporation),

by C. B., its (secretary).

1. See section 214 of chapter 689 of Laws of New York of 1892, as to this notice, and as to the proceedings of such corporation upon the expiration of sixty days from the date of mailing such notice, and the failure of such person in whose name such safe or box stands on the books of the corporation to pay the amount due for the use thereof, in full up to the date of such notice. The notice is to be sent to the person in whose name such safe or box stands on its books in a securely closed, post-paid registered letter, directed to such person at his post-office address as recorded in the books of the corporation.

TITLE II.

FORMS RELATING TO BUSINESS CORPORATIONS.

(Laws of N. Y. of 1890, chap. 567, as amended by Laws of N. Y. of 1892, chap. 689.)

- No. 402. Certificate of incorporation of business corporation.
403. Certificate required to be filed by business corporation before engaging in its business.
404. By-laws of business corporation.
405. Notice of meeting of stockholders for reorganization of existing business corporation.
406. Certificate of reorganization of existing business corporation.
407. Certificate of payment of capital stock of business corporation.
408. Supplemental certificate to be filed by business corporation, in order to become a full liability corporation.
409. Copy resolutions to be annexed to certificate, form No. 408.
410. Consent of stockholders to be annexed to certificate, form No. 408.
411. Amended certificate to extend business of business corporation.
412. Affidavit of directors present at meeting of stockholders of business corporation to be annexed to certificate, form No. 411.
413. Agreement for consolidation of business corporations.
414. Notice of meeting of stockholders for submission of agreement, form No. 413.
415. Proceedings of meeting held pursuant to notice, form No. 414.

No. 402.

Certificate of incorporation of business corporation.

(Laws of N. Y. of 1890, chap. 567, § 2, as amended by chap. 691 of Laws of N. Y. of 1892.)

We, the undersigned, A. B., whose post-office address is at —; C. D., whose post-office address is at —; E. F., whose, etc. (as above, stating name and post-office address of each subscriber), in order to become a corporation of that State for the purpose of carrying on the business (*) herein-after mentioned,¹ do hereby make, sign and acknowledge the following certificate, pursuant to the provisions of chapter 267 of the Laws of New York of 1890, passed June 7, 1890, known as the business corporation law, as amended by chapter 691 of Laws of New York of 1892, viz.:

First. The name of said corporation hereby formed shall be (stating same).²

Second. The objects for which the said corporation is to be formed, are the carrying on the business of (stating same) at (stating locality of business).

Third. The amount of the capital stock of said corporation shall be (name amount), and the number of shares thereof shall be (stating same) of — dollars each,³ viz.: — shares of common stock, and — shares of preferred stock (or, otherwise describing same), of which said A. B. hereby agrees to take — shares; said C. D. hereby agrees to take — shares; said E. F. hereby agrees, etc. (as above, stating number of shares agreed to be taken by each subscriber to the certificate).

Fourth. The principal business office of said corporation shall be located at the (city) of —, in the county of —, in the State of New York.

Fifth. The duration of said corporation shall be — years.⁴

Sixth. The number of directors of said corporation shall be (stating same),⁵ each of whom shall be a stockholder thereof, having at least five shares of stock.

Seventh. The names of the directors for the first year and their post-office addresses are as follows: A. M., whose post-office address is at —; B. N., whose post-office address is at — (and so on, stating directors and their post-office addresses).

Eighth. (Insert any other provisions for the regulation of the business and the conduct of the affairs of the corporation, and any limitation upon its powers, and the powers of its directors and stockholders, which does not exempt them from any obligation, or from the performance of any duty imposed by law.)⁵

In witness whereof, we have hereunto set our hands, this — day of —, in the year 1—.⁶

(Signatures of corporators,

(Certificate of acknowledgment by subscribers, as in form No. 89.)

1. No corporation can be formed 691 of 1892, for the purpose of carrying on any business which might be carried on by a corporation formed under chapter 567 of Laws of New York of 1890, as amended by chapter

under any other general law of the State, authorizing the formation of corporations for the purpose of carrying on such business. (Section 1 of that act, as amended.)

2. No certificate of incorporation of a proposed corporation shall be filed or recorded, having the same name as an existing domestic corporation, or a name so nearly resembling it as to be calculated to deceive, but a corporation formed by the reincorporation, reorganization or consolidation of other corporations, or upon the sale of the property or franchises of a corporation, may have the same name as the corporation or one of the corporations to whose franchises it has succeeded. (Laws of N. Y. of 1890, chap. 563, § 4, as amended by chap. 689 of Laws of 1892, § 6.)

3. Each share shall be not less than five nor more than one hundred dollars. (Laws of N. Y. of 1890, chap. 567, § 2, subd. 4, as amended by § 2 of chap. 691 of Laws of N. Y. of 1892.)

4. Not to exceed fifty years. (Id., § 2, subd. 6.)

5. Not less than three nor more than thirteen directors, who shall each be a stockholder having at least five shares of stock. (Id., § 2, subd. 7, as amended by Laws of 1892, chap. 691, § 2, subd. 7.)

6. See section 2 of chapter 567, p. 1168, of the Laws of N. Y. of 1890, which took effect May 1, 1891, as amended by chapter 691 of Laws of N. Y. of 1892, § 2, and by chapter 671 of Laws of 1895, as to this certificate and its contents.

By section 7 of same chapter, as amended, such a corporation may be or become a full liability corporation by inserting a statement in the certificate of incorporation, that the corporation thereby formed is intended to be a full liability corporation; and in case of an existing corporation, which is not a full liability corporation, it may become such by filing in the offices where certificates of incorporation are required to be filed a supplemental certificate, as to which see form No. 408 and notes thereto. And see further as to liabilities of stockholders, sections 54 and 55 of chapter 688 of Laws of 1892.

As to general qualifications of incorporators, see section 4 of chapter 687 of Laws of 1892, as amended by chapter 672 of Laws of 1895.

No. 403.

Certificate required to be filed by business corporation before engaging in its business.

(Laws of N. Y. of 1890, chap. 567, § 3, as amended by § 3, chap. 691 of Laws of N. Y. of 1892.)

We, the undersigned, A. C., the president (or, vice-president), and M. R., the treasurer (or, secretary), of the (name of corporation), do hereby certify, pursuant to the provisions of section 3 of chapter 567 of the Laws of New York of 1890, passed June 7, 1890, and known as the business corporation law, as amended by section 3 of chapter 691 of the Laws of New York of 1892, that one-half of

the capital stock of the said corporation has been in good faith subscribed.¹

In witness whereof, we have hereunto set our hands, this — day of —, in the year 1—.

A. C.,
(President.)
M. R.,
(Treasurer.)

(Certificate of acknowledgment by the president and treasurer, as in form No. 89.)

— COUNTY, ss.:

A. C., of —, and M. R., of —, being severally duly sworn, say: That the said A. C. is the (president) and that the said M. R. is the (treasurer) of the (name of corporation); that the statements contained in the foregoing certificate by them subscribed are true.

A. C.
M. R.

(Jurat, as in form No. 32.)

1. See section 3 of chapter 567 of Laws of New York of 1890, which chapter took effect May 1, 1891, as amended by section 3 of chapter 691 of Laws of New York of 1892, as to this certificate, which is to be filed be-

fore the corporation shall engage in the transaction or management of its business in the office where its certificates of incorporation were filed. See, however, amendment to that section by chapter 671 of Laws of 1895.

No. 404.

By-laws of business corporation.

The following by-laws of the (name of corporation) were adopted, pursuant to law, at a meeting held at — on the — day of —, 1—, of the stockholders of said corporation:¹

I.

The term of office of the directors of said corporation shall be (stating time not exceeding one year).²

II.

The manner of filling vacancies among directors and officers shall be (stating same).³

III.

The annual meeting of the stockholders of said corporation for the election of directors shall be held at the office of said corporation at — in the city of —, on the — day of —, in each year, or wherever the said office shall be hereafter located, by a change thereof made pursuant to law, at — o'clock in the — noon.⁴

IV.

Special meetings of the stockholders of said corporation shall be called by (stating by whom) by (stating manner of calling) and shall be held (stating manner of holding).⁵

V.

The attendance of at least — stockholders, either in person or by proxy, shall be necessary at any meeting of the stockholders in order to constitute a quorum.⁶

VI.

The officers of said corporation shall be a president, a vice-president, a secretary (and) a treasurer (naming any other officers),⁷ who shall be appointed by and from the number of the directors. The powers and duties of the president shall be (stating same); the powers and duties of the vice-president shall be (stating same); the powers and duties of the secretary shall be (stating same); [and so on, stating powers and duties of each officer].

VII.

There shall be — inspectors of election of said corporation who shall be elected [(or, appointed) (stating manner of election or appointment)].⁸

VIII.

The by-laws of said corporation may be amended (stating manner of amendment).⁹

1. By section 4 of chapter 567 of Laws of New York of 1890, the manner of adopting the by-laws of a business corporation, and the contents thereof, were prescribed and the above-form of by-laws was drawn in conformity thereto. That section has been repealed by chapter 691 of Laws of New York of 1892, but the form is inserted as giving a general form

of by-laws of a corporation, and of the subjects proper to be embraced in them.

2. The directors of every stock corporation shall be chosen from the stockholders at the time and place fixed by the by-laws of the corporation by a plurality of the votes of the stockholders voting at such election. (See § 20, ch. 688 of Laws of 1892.)

By section 2 of chapter 687 of Laws of New York of 1892, amending the general corporation law, chapter 563 of 1890, a business corporation is classed as a stock corporation.

3. By section 20, chapter 564 of Laws of New York of 1890, as amended by chapter 688 of Laws of New York of 1892, vacancies in the board of directors of a stock corporation are to be filled in the manner required by the by-laws, and if a director shall cease to be a stockholder his office shall become vacant.

4. The directors of every stock corporation shall be chosen from the stockholders at the time and place fixed by the by-laws of the corporation by a plurality of the votes of the stockholders voting at such election; at least one-fourth in number of the directors of every stock corporation shall be elected annually. (Laws of N. Y. of 1890, chap. 564, § 20, as amended by chap. 688 of Laws of N. Y. of 1892.)

If the directors shall not be elected on the day designated in the by-laws, or by law, the corporation shall not for that reason be dissolved; but every director shall continue to hold his office and discharge his duties until his successor has been elected. (Laws of N. Y. of 1892, chap. 687, § 23,

amending § 18 of chap. 563 of Laws of 1890.)

5. See section 24 of chapter 687 of Laws of New York of 1892, amending chapter 563 of Laws of 1890, as to special elections of directors, and notice to be given thereof.

6. At a special meeting of the stockholders for election of directors, the members attending shall constitute a quorum.

7. The directors of a stock corporation may appoint from their number a president, and may appoint a secretary, treasurer and other officers, agents and employees who shall respectively have such powers and perform such duties in the management of the property and affairs of the corporation, subject to the control of the directors, as may be prescribed by them or in the by-laws. (Laws of N. Y. of 1892, chap. 688, § 27, amending same section of chap. 564 of Laws of N. Y. of 1890.)

8. The inspectors of election of every stock corporation shall be appointed in the manner prescribed in the by-laws, but the inspectors of the first election of directors, and of all previous meetings of the stockholders shall be appointed by the board of directors named in the certificate of incorporation. (Laws of N. Y. of 1892, chap. 688, § 28, amending same section of chap. 564 of Laws of N. Y. of 1890.)

9. Subject to the by-laws, if any, adopted by the members of a corporation, the directors may make necessary by-laws of a corporation. (Laws of N. Y. of 1892, chap. 687, § 29, amending same section of chap. 563 of Laws of N. Y. of 1890.) See, also, subdivision 5 of § 11 of ch. 687 of Laws of 1892, as amended by ch. 672 of Laws of 1895.

No. 405.**Notice of meeting of stockholders for reorganization of existing business corporation.**

(Laws of N. Y. of 1890, chap. 567, § 5, as amended by § 4 of chap. 691 of Laws of N. Y. of 1892.)

To the stockholders of the (name of corporation):

Notice is hereby given that a meeting of the stockholders of the said corporation will be held pursuant to law at —, in the (city) of —, on the — day of —, 1—, at — o'clock in the — noon, for the purpose of (*) reincorporating the said corporation, pursuant to the provisions of section 5 of chapter 567 of the Laws of New York of 1890, passed June 7, 1890, and known as the business corporation law, as amended by section 4 of chapter 691 of Laws of New York of 1892 (and for the transaction of such other business as may properly come before said meeting).¹

Dated —, 1—.

(Signatures of directors.)

1. It is provided by section 5 of chapter 567 of the Laws of New York of 1890, which act took effect May 1, 1891, as amended by section 4 of chapter 691 of Laws of New York of 1892, that any corporation theretofore organized, except such corporations as are prohibited by the first section of that chapter (see that section cited in note 1 to form No. 402), may reincorporate under that chapter in the following manner:

For this purpose a meeting of the stockholders is to be called by the directors by the publication of the

above notice, signed by at least a majority of them, in a newspaper in the county in which its principal office is situated, once a week, for at least three successive weeks, and by serving upon each stockholder, at least three weeks before the meeting, a copy of such notice either personally or by depositing it in the post-office, postage prepaid, addressed to him at his last known post-office address. See, also, as to further proceedings, form No. 406, and note 1 thereto. See, also, subd. 5 of § 11 of chapter 687 of Laws of 1892; also chapter 671 of Laws of 1895, amending section 4 of the business corporations law.

No. 406.**Certificate of reorganization of existing business corporation.**

(Laws of N. Y. of 1890, chap. 567, § 5, as amended by § 4 of chap. 691 of Laws of New York of 1892.)

We, the undersigned, the officers of a meeting of the stockholders of the (name of corporation), called pursuant

to the provisions of section 5 of chapter 567 of the Laws of New York of 1890, passed June 7, 1890, and known as the business corporation law, as amended by section 4 of chapter 691 of the Laws of New York of 1892, by the directors of said corporation, by a notice stating the time, place and object thereof, signed by a majority of said directors and published once a week for three successive weeks in the (name of newspaper), a newspaper published in the county of —, in which county the principal office of said corporation is situated, a copy of which notice was also served three weeks before such meeting upon each stockholder of said corporation either personally or by depositing it in the post-office at —, postage prepaid, addressed to such stockholder at his last known post-office address, and a copy of which notice with proof of publication and service thereof is hereto annexed, marked "A," do hereby certify pursuant to the provisions of said section, as follows :

That the stockholders of said corporation met at the time and place specified in said notice, to-wit, at (state place), in the (city) of —, on the — day of —, 1—, at — o'clock in the — noon, and organized by choosing the undersigned, A. F., one of the directors of said corporation, as chairman, and the undersigned, G. H., as secretary thereof, and then took a vote of those present in person or by proxy upon the proposition to reincorporate said corporation under said chapter 567 of the Laws of New York of 1890, as amended as aforesaid, and that votes representing a majority of all the stock of said corporation were then and there cast in favor of that proposition, to-wit, the votes of — shares of the said stock.

And we do further certify as follows, pursuant to the provisions of said chapter, as amended, to-wit :

First. That the name of said corporation as so reorganized shall be (stating same).

Second. Same as the second clause in form No. 402

Third. That the amount of the capital stock of said corporation shall be (name amount) and the number of shares thereof shall be (stating same) of — dollars each, consist-

ing of — shares of common stock, and of — shares of preferred stock (or, give other description of stock), of which A. B., whose post-office address is at —, has agreed to take — shares; C. D., whose post-office address is, etc. (as above, stating number of shares, etc., of each subscriber to original certificate of incorporation).

Fourth. Same as fourth clause of form No. 402.

Fifth. Same as fifth clause of form No. 402.

Sixth, etc. Same as sixth, etc., clauses of form No. 402.

In witness, etc. (as in form No. 402).¹

A. F.,
President.
G. H.,
Secretary.

(Acknowledgment, as in form No. 89.)

(Annex exhibit "A," referred to in certificate.)

1. The above certificate is required by section 5 of chapter 567 of the Laws of New York of 1890, as amended by section 4 of chapter 691 of Laws of New York of 1892, to be filed in the offices where the certificates of incorporation under that chapter are to be filed. As to such filing see section 3 of chapter 563 of Laws of New York of 1890, as amended by section 5 of chapter 687 of Laws of New York of 1892. See, also, chapter 671 of Laws of 1895, amending section 4 of the business corporation law, and see notes to form No. 402.

No. 407.

Certificate of payment of capital stock of business corporation.

(Laws of N. Y. of 1890, chap. 567, § 6, as amended by § 5 of chap. 691 of Laws of N. Y. of 1892.)

We, the undersigned, a majority of the directors of the (name of corporation), the principal place of business of which corporation is located at —, in the county of —, do hereby certify, pursuant to section 6 of chapter 567 of the Laws of New York of 1890, known as the business corporation law, as amended by section 5 of chapter 691 of the Laws of New York of 1892, as follows: That one-half of the capital stock of said corporation has been paid in,

the last installment thereof having been paid in on the
—day of —, 1—.

In witness whereof, we have hereunto set our hands this
— day of —, 1—. ¹ (Signatures of directors.)

(Acknowledgment, as in form No. 89.)

STATE OF NEW YORK, } ss.:
— County,

A. B. and C. D., of, etc., being severally duly sworn,
say, and each for himself says: That said A. B. is the presi-
dent (or, vice-president), and said C. D. is the secretary (or,
treasurer), of the (name of corporation), named in the fore-
going certificate. That the statements contained in the said
certificate are true.

(Signatures of affiants.)

(Jurat, as in form No. 32.)

1. See section 6 of chapter 567 (p. amended by section 5 of chapter 691
1169) of Laws of New York of 1890, of Laws of New York of 1892, as to
which took effect May 1, 1891, as this certificate.

No. 408.

**Supplemental certificate to be filed by business corporation
in order to become a full liability corporation.**

(Laws of N. Y. of 1890, chap. 567, § 7, as amended by Laws
of N. Y. of 1892, chap. 691, § 6.)

We, the undersigned, the president and treasurer of the
(name of corporation), a corporation formed under chapter
567 of the Laws of New York of 1890, passed June 7, 1890,
and known as the business corporation law, as amended by
chapter 691 of the Laws of New York of 1892, do hereby
certify, pursuant to the provisions of section 7 of said chap-
ter, as amended as aforesaid, in order that said corporation
may become a full liability corporation, as follows: That
hereafter the said corporation intends to be a full liability
corporation. That we have annexed hereto, pursuant to
said section 7, as amended as aforesaid, a copy of a resolu-
tion adopted by a two-thirds vote of the board of directors

of said corporation and the written consent of all the stockholders of said corporation, authorizing and consenting to the change of said corporation to a full liability corporation, marked respectively "A" and "B."

In witness, etc. (as in form No. 402).¹

A. B.,
President.
E. F.,
Treasurer.

(Certificate of acknowledgment, as in form No. 89.)
(Annex exhibits "A" and "B," referred to in the above certificate, forms Nos. 409 and 410.)

1. See section 7 of chapter 567 of Laws of New York of 1890, which act took effect May 1, 1891, as amended by section 6 of chapter 691 of Laws of New York of 1892, as to this certificate. By that section, if the corporation is formed as or becomes a full liability corporation, all the stockholders are to be severally individually liable to its creditors for all its debts and liabilities, and may be joined as defendants in any action against it. The change takes effect from the time of filing the certificate in the offices where certificates of incorporation are required to be filed.

No. 409.

Copy resolution to be annexed to certificate, form No. 408.

(Laws of N. Y. of 1890, chap. 567, § 7, as amended by § 6 of chap. 691 of Laws of N. Y. of 1892.)

At a meeting of the board of directors of the (name of corporation), held at, etc., on, etc., the following resolution was adopted by a two-thirds vote of said board :

Resolved, That this board does hereby authorize and consent, pursuant to statute, to the change of the (name of corporation) to a full liability corporation.

Copy.

M. R.,
Secretary.

No. 410.**Consent of stockholders to be annexed to certificate, form No. 408.**

(Laws of N. Y. of 1890, chap. 567, § 7, as amended by § 6 of chap. 691 of Laws of N. Y. of 1892.)

We, the undersigned, all the stockholders of the (name of corporation), do hereby consent, pursuant to the provisions of section 7 of chapter 567 of the Laws of New York of 1890, passed June 7, 1890, and known as the business corporation law, as amended by section 6 of chapter 691 of the Laws of New York of 1892, to the change of said corporation to a full liability corporation.

In witness, etc. (as in form No. 402).¹

A. B., ——— shares.

C. D., ——— shares, etc.

(Certificate of acknowledgment by the stockholders, as in form No. 89.)²

1. See section 7 of chapter 567 of Laws of New York of 1890, which act took effect May 1, 1891, as amended by section 6 of chapter 691 of Laws of New York of 1892, as to this consent.

2. The statute does not, however, require the consent to be acknowledged.

No. 411.**Amended certificate for the purpose of extending business of business corporation.**

(Laws of N. Y. of 1890, chap. 567, § 8, as amended by § 7 of chap. 691 of Laws of N. Y. of 1892.)

As in form No. 402, to (*), and from thence as follows :
Of (stating additional business) in addition to the business mentioned in the original certificate of incorporation of said corporation, dated ———, 1——, do hereby execute the following amended certificate, pursuant to the provisions of section 8 of chapter 567 of, etc. (describing act as in form

No. 402), as amended by, etc., the extension of business proposed hereby having been authorized by a vote of stockholders representing three-fourths of the capital stock of said corporation, at a meeting called and held as provided in section 2 of said act, and a copy of the proceedings of which meeting, verified by the affidavit of three of the directors present thereat, is filed herewith:

First. Same as in form No. 402.

Second. The object for which the said corporation is to be formed is the carrying on the business of (stating same) in addition to the business of (stating same) as stated in the said original certificate of incorporation of said corporation; and the locality at which said business is to be carried on is at (stating locality of business).

Third. Same as in form No. 402.

Fourth. Same as in form No. 402.

Fifth. Same as in form No. 402.

Sixth. Same as in form No. 402.

Seventh. Same as in form No. 402.

In witness, etc. (as in form No. 402).¹

(Signatures of corporators.)

(Certificate of acknowledgment, as in form No. 89.)²

(Annex copy of proceedings of meeting of stockholders and verification thereto, as required by section 8 of chapter 567 of Laws of New York of 1890, as amended by section 7 of chapter 691 of Laws of New York of 1892.)

1. See section 8 of chapter 567 of Laws of New York of 1890, which act took effect May 1, 1891, as amended by chapter 691 of Laws of New York of 1892, section 7, as to this certificate; and see form No. 402, and notes thereto. This extension may be made within one year from the date of the certificate of incorporation, and the extension of business must be of the same general character as that stated in and

which might have been properly included in the original certificate.

2. The statute does not, in terms, require this amended certificate to be acknowledged, but that is probably its intention.

See also chapter 671 of Laws of 1895, repealing the above section 7. This proceeding is now regulated by section 32 of chapter 688 of Laws of 1892, known as the stock corporation law

No. 412.

Affidavit of directors present at a meeting of stockholders of business corporation to be annexed to a copy of proceedings of such meeting, annexed to amended certificate, form No. 411.

(Laws of N. Y. of 1890, chap. 567, § 8, as amended by § 7 of Laws of N. Y. of 1892.)

STATE OF NEW YORK, }
 — County, } ss.:

A. B., C. D. and E. F., being severally duly sworn, say, and each for himself says: That they are directors of the (name of corporation) and were present at a meeting of the stockholders of said corporation held at, etc., on, etc., that the paper hereto annexed, marked "A," is a copy of the proceedings of such meeting.¹

A. B.

C. D.

E. F.

(Jurat, as in form No. 32.)

1. See section 8 of chapter 267 of Laws of New York of 1892, as to Laws of New York of 1890, as this affidavit. See note 2 to form No. amended by section 7 of chapter 691 411.

No. 413.

Agreement for consolidation of business corporation.

(Laws of N. Y. of 1890, chap. 567, § 13, as amended by § 8 of chap. 691 of Laws of New York of 1892.)

This agreement, made this — day of —, in the year 1—, between the board of directors of the (name of corporation) and the board (or, boards) of directors of the (name or names of corporation or corporations), corporations organized for the purpose of carrying on the business of (state same), witnesseth:

That the said boards of directors do hereby agree, pursuant to section 13 of chapter 567 of the Laws of New York of 1890, passed June 7, 1890, and known as the business corporation law, as amended by section 8 of chapter 691 of Laws of New York of 1892, for the purpose of consolidating the said corporations into a single corporation, as follows, viz.:

First. That the terms and conditions of such consolidation and the mode of carrying the same into effect shall be as follows, viz.: (stating same.)

Second. That the name of the new corporation shall be the (insert same) and the term of existence of said corporation shall be (fifty) years.

Third. That the number of the directors who shall manage the affairs of such new corporation shall be (stating number, not less than three nor more than thirteen), and that the names and post-office addresses of the directors thereof for the first year shall be, A. B., whose post-office address is at the (city) of —, in the county of —, and State of —; C. D., whose, etc. (as above, stating in like manner the name and post-office address of each).

Fourth. That the operations of said new corporation are to be carried on at the (town) of —, in the county of —, in the State of New York [and at the (town) of —, in the county of —, and State of New York, etc. (mentioning each town or city and county)].

Fifth. That the principal place of business of said new corporation is to be situated at the town (or, city) of —, in the county of —, and State of New York.

Sixth. That the amount of the capital stock of said new corporation shall be — dollars,¹ which stock is to be divided into — shares of — dollars each and is to be distributed among the holders thereof in the following manner, to-wit, (stating manner).

[Seventh. That it is proposed that a part of the business of said new corporation, to-wit (stating what part shall be carried on at (stating place), in the State of —, (and stating such other particulars as are deemed necessary).]²

In witness, etc. (as in form No. 368).

(Signatures of directors.)

(Affix seals of both corporations.)

- | | |
|--|--|
| 1. The amount of capital stock is not to be larger than the fair aggregate value of the property, franchises and rights of such corporations (Section 13 of chapter 567 of Laws of New York of 1890, as amended by section | 8 of chapter 691 of Laws of New York of 1892). |
| 2. If said corporations, or either of them, shall have been organized for the purpose of carrying on any part of its business in any place out of | |

the State, and such new corporation shall propose to carry on any part of its business out of the State, the agreement must so state.

See section 13 of chapter 567 of Laws of New York of 1890, which took effect

May 1, 1891, as amended by section 8 of chapter 691 of Laws of New York of 1892, as to this agreement, and see chapter 671 of Laws of 1895, amending said section 8 of the business corporations law.

No. 414.

Notice of meeting of stockholders of business corporations for submission of agreement for consolidation.

(Laws of N. Y. of 1890, chap. 567, § 14, as amended by § 9 of chap. 691 of Laws N. Y. of 1892.)

As in form No. 405, to (*), and from thence as follows: The approval, pursuant to the provisions of section 14 of chapter 567 of the Laws of New York of 1890, as amended by section 9 of chapter 691 of Laws of New York of 1892, of an agreement, dated —, 1—, made between the board of directors of said corporation and the board (or, boards) of directors of the (name (or, names) of corporation (or, corporations) with which agreement is to be made) for the consolidation of the said corporations, which agreement will be submitted to such meeting, and for the transaction of such other business as may properly come before said meeting.

By order of the board of directors.¹

Dated —, 1—.

A. M.,

Secretary of the (name of corporation).

1. See section 14 of chapter 567 of Laws of New York of 1890, which act took effect May 1, 1891, as amended by chapter 691 of Laws of

New York of 1892, § 9, as to this notice and its service and publication. See, also, forms Nos. 413, 415, and notes thereto as to this proceeding.

No. 415.

Proceedings of meeting of stockholders of business corporation, held pursuant to notice, form No. 414.

(Laws of N. Y. of 1890, chap. 567, § 14, as amended by § 9 of chap. 691 of Laws of N. Y. of 1892.)

At a meeting of the stockholders of the (name of corporation) held, pursuant to law, at (name of place), in the (city)

of —, in the county of — and State of New York, on the — day of —, 1—, the following proceedings were had:¹

The meeting was called to order by A. B., upon whose motion F. R. was made president and P. C. secretary thereof.

A vote by ballot of the stockholders was taken upon the question of (*), the approval of the agreement made by the board of directors of said corporation with the board of directors of the (name of corporation), dated —, 1—, providing for the consolidation of said corporations pursuant to the provisions of chapter 567 of the Laws of the State of New York of 1890, as amended by section 9 of chapter 691 of the Laws of New York of 1892, and upon the counting of such ballots, stockholders owning (more than) two-thirds of the stock of said (name of corporation) were found to have voted in favor of the approval of such agreement.

P. C.,
Secretary.

STATE OF NEW YORK, }
County of —, } ss.:

P. C., of —, being duly sworn, says: That he was the secretary of the meeting of the stockholders of the (name of corporation) above referred to. That the foregoing is a true copy of the record of the proceedings of said meeting.¹

(Jurat, as in form No. 32.)

P. C.

1. The agreement, form No. 413, chap. 567 of Laws of New York of 1890, as amended by § 9 of chap. 691 of the Laws of New York of 1892.)

As to objection by stockholder not voting in favor of the agreement to consolidate, to such consolidation, and demand of payment for his stock, and the appraisal of such stock and purchase thereof by the new corporation, see same section, the provisions of which are substantially the same as those of section 2 of chapter 960 of Laws of 1867. (See forms under that section Nos. 222-227, Vol. 3, Lansing's Forms of Civil Procedure.)

effect as therein provided. (§ 14 of

TITLE III.

FORMS UNDER GENERAL CORPORATION LAW.

(Laws of N. Y. of 1890, chap. 563, as amended by chap. 687 of Laws of N. Y. of 1892.)

- No. 416. Certificate of authority of a foreign corporation.
- 417. Statement and designation by foreign corporation in order to obtain certificate of authority.
- 418. Proxy to vote at election for a member of corporation.
- 419. Oath by member of corporation upon his vote being challenged.
- 420. Oath by proxy of member upon challenge.
- 421. Notice of special election of such directors.
- 422. Certificate of extension of corporate existence of corporation.

No. 416.

Certificate of authority of a foreign stock corporation, other than a monied corporation.

(Laws of N. Y. of 1890, chap. 563, as amended by chap. 687 of Laws of N. Y. of 1892, § 15.)

STATE OF NEW YORK, }
Office of the Secretary of State, } ss.:

I, M. F., secretary of State of the State of New York, do hereby certify, pursuant to the provisions of the general corporation law, as amended, that the (name of corporation) a foreign corporation, the business (or, objects) of which are (stating same), has complied with all the requirements of law to authorize it to do business in this State, and that the business of the said corporation to be carried on in this State is such as may be lawfully carried on by a corporation incorporated under the laws of this State for such or similar business (or, by two (or, state number of) corporations incorporated under the laws of this State for such kinds of business respectively).

In witness whereof, I have hereunto set my signature and the seal of said State, this — day of —, 1—.¹

[L. S.]

M. F.,
 Secretary of State.

1. See section 15 of chapter 687 of act chapter 563 of the Laws of New York of 1892, by which New York of 1890 is amended, as to this

certificate, without having procured which no foreign stock corporation, other than a monied corporation, is permitted to do business in the State of New York. See, also, same section as to such corporations doing business in that State at the time of the passage of the act, and see chapter 240 of Laws

of New York of 1895, as to licensing foreign stock corporations. See, also, Neuchatel Asphalte Co., Limited, v. Mayor, etc., of New York (12 Misc. 26); Schlitz Brewing Co. v. Ester (86 Hun, 22); Providence Steam, etc., Co. v. Connell (id., 319).

No. 417.

Statement and designation by foreign stock corporation in order to obtain certificate of authority, form No. 416.

(Laws of N. Y. of 1890, chap. 563, as amended by chap. 687 of Laws of N. Y. of 1892, § 16.)

The (name of corporation), a foreign stock corporation, organized under the laws of the (State) of —, does hereby, pursuant to the general corporation law of the State of New York, as amended by chapter 687 of the Laws of New York of 1892, make the following statement and designation:

First. That the business (or, objects) of the said corporation which it is engaged in carrying on (or, which it proposes to carry on) within the State of New York is (or, are) as follows: (stating same).

Second. That the place of business of said corporation within the State of New York, which is to be its principal place of business therein, is in the (city) of —, in the county of —.

Third. The said corporation does hereby designate and appoint, pursuant to said act, A. M., who has an office (or, place of business) (at No. — — street), in the (city) of — in the State of New York,¹ as a person upon whom a summons or any process or other paper, whereby a special proceeding is commenced in a court or before an officer, except a proceeding to punish for contempt, and except where special provision for the service thereof is otherwise made by law, may be served for said corporation within that State.

In witness whereof, the said (name of corporation) has caused its (president, etc.) to affix hereto his signature and its corporate seal this — day of —, in the year 1—.

[L. S.]

In presence of

B. M.

A. M.,

President (or, naming other acting head of corporation).

(Acknowledgment or proof, as in form No. 89.)

I, A. M., the person named in the foregoing instrument, do hereby consent to the designation of myself, made by said instrument, as a person upon whom a summons, process, or other paper as therein mentioned may be served within the State of New York, upon (name of corporation).

Dated —, 1—.

A. M.

In presence of

B. M.

(Acknowledgment, etc., as in form No. 89.)

1. The person so designated must have an office or place of business at the place where such corporation is to have its principal place of business within the State. (Laws of N. Y. of 1892, chap. 687, § 16.)

1. See section 16 of chapter 687 of Laws of New York of 1892, amending the general corporation law, and subdivision 2 of section 432 of New

York Code of Civil Procedure, as to this statement and designation. For revocation of authority, see Lansing's Forms of Civil Procedure, volume 1, No. 87; and see provisions of section 16 above cited in case of death or removal of persons designated from the principal place of business within the State of the corporation. See, also, chapter 672 of Laws of 1895, amending said section 16 of the general corporation law.

No. 418.

Proxy to vote at election or meeting for a member of corporation.

(Laws of N. Y. of 1890, chap. 563, as amended by chap. 687 of Laws of 1892, § 21.)

Know all men by these presents, that I, A. B., of —, do hereby constitute and appoint E. F., of —, my attorney and agent for me and in my name, place and stead, to vote as my proxy at any election of directors (or, meeting of the stockholders) of the (name of corporation), according to the number of votes I shall be entitled to vote if then personally present. (This proxy is to continue in force until the — day of —, 1—, unless sooner revoked.)

In witness whereof, I have hereunto set my hand and seal this — day of —, 1—.¹

A. B. [L. S.]

(by C. R., his attorney.)

Sealed and delivered in presence of

I. J.

(Acknowledgment, etc., as in form No. 89.)

1. See section 21 of chapter 687 of which act chapter 563 of Laws of 1890 Laws of New York of 1892, by is amended, as to this proxy, and as to

revocation, expiration, etc. By that section no officer, clerk, teller or book-keeper of a corporation formed under or subject to the banking law shall act as proxy for any stockholder at any meeting of any such corporation. A corporation having no capital stock may, by that section, prescribe in its by-laws the persons who may act as proxies for members, and the length of time for which proxies may be executed.

No. 419.

Oath by member of corporation upon his vote being challenged.

(Laws of N. Y. of 1890, chap. 563, as amended by chap. 687 of Laws of N. Y. of 1892, § 22.)

I, A. B., do solemnly swear that in voting at this election I have not, either directly, indirectly or impliedly, received any promise or sum of money, or anything of value to influence the giving of my vote or votes at this meeting or as a consideration therefor (and that I have not sold or otherwise disposed of my interest in or title to any shares of stock or bonds in respect to which I offer my vote at this election, but that all such shares or bonds are still owned by me.)¹

A. B.

(Jurat, as in form No. 32.)

¹ See section 22 of chapter 687 of Laws of New York of 1892, amending chapter 563 of Laws of 1890, as to this oath, and oath form No. 420.

The words in parenthesis are to be inserted, in case of a stock corporation, in both oaths, and see amendment to said section 22 by chapter 672 of Laws of New York of 1895.

No. 420.

Oath by proxy of member of corporation upon challenge.

(Laws of N. Y. of 1890, chap. 563, as amended by chap. 687 of Laws of N. Y. of 1892, § 22.)

I do solemnly swear that I have not, either directly, indirectly or impliedly, given any promise or any sum of money or anything of value, to induce the giving of a proxy to me to vote at this election, or received any promise or any sum of money or anything of value to influence the giving of my vote at this meeting, or as a consideration there-

for (and that the title to the stocks and bonds upon which I now offer to vote is, to the best of my knowledge and belief, truly and in good faith vested in the persons in whose names they now stand).¹

C. D.

(Jurat, as in form No. 32.)

1. See note to last form, No. 419.

No. 421.

Notice of special election of directors of corporation.

(Laws of N. Y. of 1890, chap. 563, as amended by chap. 687 of the Laws of N. Y. of 1892.)

To the stockholders of the (insert corporate name):

You are hereby notified that a meeting (*) of said corporation for the purpose of electing directors thereof, will be held at the office of said corporation (No. — street), in the (city) of —, on the — day of —, 1—, at — o'clock in the — noon.

Dated —, 1—.

By order of the board of directors.

M. F.,
Secretary.

[Or, To, etc. (as above). Notice is hereby given that no election of directors of said corporation having been held on the — day of —, 1—, designated by the by-laws of said corporation therefor, and none having been called by the directors of said corporation (or, that at the meeting held at —, on the — day of —, 1—, as designated by the by-laws of said corporation, no directors of said corporation were elected, a meeting (as above from (*)) omitting the words "By order, etc.")].¹

Dated —, 1—.

E. F.,
Stockholder (or, member) of said corporation.]

1. See section 24 of chapter 687 of Laws of New York of 1892, amending chapter 563 of Laws of New York of 1890, as to this notice and the publication and service thereof, and see, also, Matter of David Jones Co. (67 Hun, 360).

No. 422.**Certificate of extension of corporate existence of corporation.**

(Laws of N. Y. of 1890, chap. 563, as amended by chap. 687 of Laws of N. Y. of 1892, § 32.)

We, the undersigned, stockholders owning (more than) two-thirds in amount of the capital stock (or, two-thirds of the members) of the (name of corporation), do hereby, pursuant to the general corporation law of the State of New York, as amended, for the purpose of extending the corporate existence of said corporation for the term of — years beyond the time specified in its original certificate of incorporation (or, by law; or, in a certificate of extension of its corporate existence, dated —, 1—, and filed in the (naming offices) on the — day of —, 1—), certify that we consent to such extension for the period above mentioned, that is to say, for — years from the — day of —, 1—.

In witness, etc. (as in form No. 365).¹

(Signatures of stockholders or members.)

(Acknowledgment, as in form No. 89.)

1. See section 32 of chapter 687 of to this certificate and filing and effect Laws of New York of 1892, amend- thereof.
ing chapter 563 of Laws of 1890, as

TITLE IV.**FORMS RELATING TO RAILROAD CORPORATIONS.**

(Laws of N. Y. of 1890, chap. 565, as amended by chap. 676 of Laws of N. Y. of 1892.)

ARTICLE I.**FORMS RELATING TO RAILROADS GENERALLY.**

(Same act as amended, art. 1.)

No. 423. Certificate of incorporation of railroad corporation.

424. Affidavit to be indorsed upon or annexed to certificate of incorporation of railroad corporation.

425. Supplemental certificate of names and places of residences of directors omitted from original certificate of incorporation of railroad corporation.

- No. 426. Notice to occupant of lands of filing map and profile of route, etc.
427. Petition by owner or occupant of land over which route of railroad is located for the appointment of commissioners to examine the route.
428. Notice of application to justice of Supreme Court for appointment of commissioners to examine route of railroad corporation.
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434. Certificate of incorporation of railroad corporation for construction, etc., of railroad in foreign country.
435. Notice to railroad corporation by laborer of amount due him from contractor.
436. Notice of sale of unclaimed freight or baggage by railroad corporation.
437. Report to comptroller of sale of unclaimed freight, etc.
438. Proofs of advertisement accompanying report, form No. 437.
439. Oath of policeman appointed by the governor to act for railroad corporation.
440. Notice by railroad corporation that they no longer require the services of a policeman.
441. Agreement for consolidation of railroad corporations.
442. Notice of meeting of stockholders to consider as to consolidation of railroad corporations.
443. Certificate of adoption of agreement for consolidation of railroad corporations.
444. Notice of meeting of stockholders of railroad corporation to consider question of leasing of road.
445. Certificate of adoption of agreement for leasing of railroad.

No. 423.

Certificate of incorporation of railroad corporation.

(Laws of N. Y. of 1890, chap. 565, § 1, as amended by chap. 676 of Laws of 1892.)

We, the undersigned, A. B., whose post-office address is at —, C. D., whose post-office address is at —, etc. (stating name and post-office address of each subscriber to the certificate), in order to become a corporation formed

for the purpose of building, maintaining and operating a railroad (or, for the purpose of maintaining and operating a railroad already built, not owned by a railroad corporation),¹ do hereby execute and acknowledge the following certificate, pursuant to the provisions of article 1 of chapter 565 of the Laws of New York, passed June 7, 1890, known as the railroad law, as amended by chapter 676 of the Laws of New York of 1892, and do hereby state as follows: (*)

First. That the name of said corporation shall be the (insert name).²

Second. That the said corporation shall continue for — years.

Third. That the kind of road to be built (or, operated) by said corporation is (stating same).

Fourth. That the length of road is to be — miles, and the termini thereof are at or near (or, at or near — in; or, at a convenient point in) the (city of —, in the county of — and State of New York), and at or near —, in, etc. (stating in like manner the other terminus).³

Fifth. That the names of the counties and of each of them in which said road or some part thereof is to be located, are as follows, viz.: the counties of (stating them).

Sixth. That the amount of the capital stock of said corporation is to be — dollars, and the number of shares into which said capital stock is to be divided is — shares of — dollars each;⁴ of which said A. B. agrees to take — shares; said C. D. agrees to take — shares (and so on, stating the number of shares agreed to be taken by each subscriber to the certificate). — shares of said stock are to be common stock, and — shares of said stock are to be preferred stock, and the latter is to be entitled to the following rights and privileges over the former, viz.: (stating them).⁵

Seventh. That the names of the (nine)⁶ directors of said corporation who shall manage its affairs for the first year, are as follows, viz.: A. B., whose post-office address is (stating same); C. D., whose post-office address is (stating same); [and so on, stating in like manner the name and post-office address of each such director].

Eighth. That the place where the principal office of said corporation is to be located is the (city) of —, in the county of —.

[Ninth. That the names and description of the streets, avenues and highways in which such road is to be constructed are as follows: (giving names, etc.)]⁷

Tenth. (Here are to be inserted in the case of a steam railway in a county or city provided for by article 5 of chapter 565 of Laws of New York of 1890, as amended by chapter 676 of Laws of New York of 1892, the statements required by section 126 of that article.)

In witness whereof we have hereunto set our hands, at the (city) of —, on this — day of —, 1—.⁸

(Signatures of corporators.)

(Certificate of acknowledgment by corporators, as in form No. 89.)

(Annex affidavit next form, No. 424, and in case of railway corporation specified in article 5 of said chapter 565, annex also the certificate of the railroad commissioners showing the organization of the corporation for the purposes mentioned in the certificate.)

1. The corporation may be formed for either or both purposes by fifteen or more persons.

2. See section 4 of chapter 563 of Laws of New York of 1890, which took effect May 1, 1891, as amended by section 6 of chapter 688 of Laws of New York of 1892, cited in note 2 to form No. 402, as to name of corporation.

3. See *Mason v. Brooklyn, etc., Railroad Co.* (35 Barb. 373); *People v. Brooklyn, etc., Railway Co.* (89 N. Y. 75); *Mohawk Bridge Co. v. Utica and Schenectady Railroad Co.* (6 Paige, 554); *Brooklyn Central Railroad Co. v. Brooklyn City Railroad Co.* (32 Barb. 358); *People v. Albany and Vermont Railroad Co.* (24 N. Y. 261); *Buffalo and Jamestown Railroad Co. v. Gifford* (87 id. 294);

Buffalo and Pittsburgh Railroad Co. v. Hatch (20 id. 157); *N. Y., Lackawanna, etc., Railroad Co. v. Union Steamboat Co.* (35 Hun, 220; aff'd, S. C., 99 N. Y. 12); *Buffalo, Corning and N. Y. Railroad Co. v. Pottle* (23 Barb. 21); construing section 1 of chapter 140 of Laws of New York of 1850.

4. The amount of the capital stock shall be not less than ten thousand dollars for every mile of road built or proposed to be built, except a narrow-gauge road, when it shall be not less than three thousand dollars for every such mile. (Laws of New York of 1890, chap. 565, § 2, as amended by Laws of New York of 1892, chap. 676, § 2.)

5. If the capital stock is to consist of common and preferred stock,

insert this clause. (See same section.)

A subscription for stock made before the incorporation of the company and contained in the articles of association, is obligatory upon the subscriber, although he makes no cash payment whatever. The right to membership is a sufficient consideration for the subscriber's liability, and he cannot revoke the subscription. (Lake Ontario, etc., Railroad Co. v. Mason, 16 N. Y. 451.)

6. Not less than nine directors. Where at the time of signing the articles of association of a railroad company the names of the directors were left in blank, it was *held* that the instrument was incomplete and inoperative as against one of the signers who was sued for his first subscription to the stock; that there was no implied consent upon his part to the insertion of the names of any persons as directors; and that by the insertion of such names without his consent, the instrument was not made binding upon him. (Dutchess and Columbia Railroad Co. v. Mabbett, 58 N. Y. 397.)

See, also, section 3 of chapter 565 of Laws of New York of 1890, as amended in 1892, as to filing supplemental certificate containing the names and places of residence of the directors, where these shall have been omitted from the certificate, when executed and acknowledged, and thereafter the requisite number of directors has been chosen at a meeting of the subscribers to the certificate. For form of such certificate, see next form, No. 424.

7. Insert this clause in case of a street surface railway.

8. See section 1 of article 1 of chapter 565 of Laws of New York of

1890, which took effect May 1, 1891, as to this certificate and its contents. That section is a substitute for section 1 of chapter 140 of the Laws of 1850, which section is repealed by said chapter 565 of 1890.

The articles of association to be filed may be upon separate sheets, each of which, being a copy of the others, has been signed by only a portion of the members of the company. (Lake Ontario, etc., Railroad Co. v. Mason, 16 N. Y. 451.)

See, also, *Erie and N. Y. City Railroad Co. v. Owen* (32 Barb. 616); *Burt v. Farrar* (24 id. 518); *Ogdensburg, etc., Railroad Co. v. Frost* (21 id. 541), generally as to articles and their execution.

See as to execution of articles by agent, *Matter of N. Y., L., etc., R. Co.* (99 N. Y. 12).

See as to amended certificate of incorporation, section 5 of chapter 563 of Laws of New York of 1890, as amended; as to filing certified copy of certificate in case of loss of either of duplicate certificates, see section 6, id., as amended; as to filing certificate, see section 3, id., as amended; and see that act, which took effect May 1, 1891, and amendments thereto by chapter 687 of Laws of New York of 1892, generally as to corporations.

It is provided by section 5 of chapter 565 of Laws of New York of 1890, that if any domestic railroad corporation shall not, within five years after its certificate of incorporation is filed, begin the construction of its road and expend thereon ten per cent. of the amount of its capital, or shall not finish its road and put it in operation in ten years from the time of filing such certificate, its corporate existence and powers shall cease. See, also, chapter 700 of Laws of N. Y. of 1895, and see chapter 545 id. amending section 59 added to railroad law by chapter 676 of Laws of 1892.

No. 424.

Affidavit to be indorsed upon or annexed to certificate of incorporation of railroad corporation.

(Laws of N. Y. of 1890, chap. 565, § 2, as amended by chap. 676 of Laws of N. Y. of 1892.)

STATE OF NEW YORK, }
 — County, } ss.:

A. B., of —, C. D., of —, and E. F., of —, being severally duly sworn, depose and say, and each for himself deposes and says, that they are three of the directors of the (name of corporation), a railroad corporation, who are named in the certificate of incorporation of said corporation as directors who shall manage its affairs for the first year. That at least (one thousand dollars)¹ of stock for every mile of road built (or, proposed to be built) by said corporation has been subscribed thereto, and paid in good faith and in cash to the said directors named in said certificate, and that it is intended in good faith to build, maintain and operate the road mentioned in said certificate.² (Add in case of a railway corporation specified in article 5 of chapter 565 of Laws of New York of 1890, as amended, the additional matter required by section 128 of that article.)

(Jurat, as in form No. 32.)

A. B.
 C. D.
 E. F.

1. The amount of capital stock, by subdivision 6 of section 2 of chapter 565 of Laws of New York of 1890, as amended in 1892, is required to be at least \$10,000 for every mile of road built or proposed to be built, except a narrow-gauge road, when it shall not be less than \$3,000 for every such mile.

2. The delivery of a certified check by a subscriber to the stock, for ten per cent upon the amount of his subscription on the day previous to the day of the filing of the articles, dated

on the day of its delivery, to a director of the company named in the articles, payable to his order as treasurer of the company, which check was deposited by the director on the day of such filing, although credit was not given to him therefor upon the books of the bank until the next day. *Held*, to be a compliance with the provisions of the statute as to payment in cash of ten per cent on the subscription prior to the filing of the articles. (Matter of Staten Island Rapid Transit Railroad Co. v. Bodine, 38 Hun,

381; citing *Matter of Seneca Co. v. Starin*, 37 id. 422; *aff'd*, S. C., 101 N. Y. 636.)

The affidavit of three directors that \$84,100 has been subscribed in good faith to the capital stock, annexed to and referring to the articles which state the *termini* of the road, and that its length is about seventy-five miles, is sufficient evidence that at least \$1,000 of stock for every mile of the road proposed is subscribed. (*Buffalo and Pittsburgh Railroad Co. v. Hatch*, 20 N. Y. 157.)

The statement in such affidavit, that "ten per cent has been paid in cash on said subscription," is sufficient, without adding that it was paid to the directors or in good faith. (*Id.*)

The defendant having been applied to by an agent employed to procure subscriptions to the stock of the plaintiff, gave his check for the ten per cent required by the act of 1850 to be paid in cash, upon the express agreement that he should never be called upon to pay the same. In an action brought by the company upon the check, *Held*, (1) that the taking of the check for the ten per cent required to be paid in cash was not such a violation of the act as to render it void; (2) that the agent had no authority, no express authority to do so being shown, to bind the company by

his agreement in regard to the liability of the defendant upon the check. (*Syracuse, P. & O. Railroad Co. v. Gere*, 4 Hun, 392.)

It is not necessary that ten per cent be paid upon the amount of each subscription at the time of making the same, or previous to the filing of the articles with the secretary of State. It is sufficient if the cash payments, by whomsoever made, amount in the aggregate to ten per cent upon \$1,000 for each mile of road proposed to be constructed. (*Lake Ontario, Auburn and New York Railroad Co. v. Mason*, 16 N. Y. 451.)

The mere filing of articles of association will not constitute a railroad corporation *de jure*, but there must be a stock subscription of at least \$1,000 for every mile of the proposed railroad, and the payment thereon of ten per cent in cash, as required by the General Railroad Act. (*Farnham v. Benedict*, 107 N. Y. 159.)

See as to contents of this affidavit the last paragraph of section 2 of chapter 565 of Laws of New York of 1890, which act took effect May 1, 1891. By that chapter section 1 of chapter 140 of Laws of 1850, entitled "An act to authorize the formation of railroad corporations, and to regulate the same," is repealed. See, also, chapter 238 of Laws of New York of 1893, as to filing amended affidavits to certificates of incorporation of railroad companies.

No. 425.

Supplemental certificate of names and places of residence of directors, omitted from original certificate of incorporation of railroad corporation.

(Laws of N. Y. of 1890, chap. 565, § 3.)

Whereas, the names and places of residence of the directors of the (name of corporation), were omitted from the original certificate of incorporation of the said corporation, when the same was executed and acknowledged.

And whereas, the requisite number of said directors has been since chosen at a meeting of the subscribers to said certificate, held at —, on the — day of —, 1—:

Now, therefore, we, A. B., etc., the subscribers to said certificate, do hereby execute and acknowledge the following supplemental certificate, pursuant to section 3 of article 1 of chapter 565 of the Laws of New York of 1890, passed June 7, 1890, and known as the railroad law, as follows:

That the following persons were chosen at said meeting as directors of said corporation, viz.: A. B., whose place of residence is at, etc. (stating same); C. D., whose place, etc., is (stating in like manner the names and places of residence of such directors).

In witness, etc. (as in form No. 423).¹

(Signatures of subscribers.)

(Certificate of acknowledgment, as in form No. 89.)

1. See section 3 of chapter 565 of Laws of New York of 1890, which act took effect May 1, 1891, referred to in note 6 to form No. 423, as to this certificate and its contents.

No. 426.

Notice to occupant of lands of filing map and profile of route, etc.

(Laws of N. Y. of 1890, chap. 565, § 6, as amended by chap. 676 of Laws of N. Y. of 1892.)

To A. B. (naming occupant):

You are hereby notified that the map and profile of the route adopted by the (name of corporation), in the county of —, duly certified as required by law, were filed in the county clerk's office of the county of —, on the — day of —, 1—, at — o'clock in the — noon, and are there on file, and that the route designated thereby passes over lands occupied by you.¹

Dated —, 1—.

Yours, etc.,

The (name of company)

by F. R., Secretary,

1. Section 6 of chapter 565 of Laws of New York of 1890, which is a substitute for section 22 of chapter 140 of the Laws of New

York of 1850, repealed by that chapter, as amended, provides that every railroad corporation, except a street surface railroad corporation and an elevated railway corporation, before constructing any part of its road in any county named in its certificate of incorporation, shall make a map and profile of the route adopted by it in such county, certified by the president and engineer of the corporation, or a majority of the directors, and file it in the office of the clerk of the county in which the road is to be made. The corporation is required to give written notice to all actual occupants of the lands over which the route of the road is so designated, and which has not been purchased by or given to it, of the time and place such map and profile were filed, and that such route passed over the land of such occupants.

Said section 6 was amended by chapter 676 of Laws of New York of 1892.

The right to the notice required to be given by the above section (22) is a right given to each owner, by the statute, and it is not for the corporation or for the court to deprive him of it. (*Matter of N. Y. and Boston Railroad Co. v. Goodwin*, 62 Barb. 85.)

If the occupant does not take the statutory steps, within fifteen days, to secure a review or alteration of the route, the route may be considered settled, and his right thereafter to object to the location as lost. (*Id.*)

As to the requisites of the map and profile to be filed, see same case.

A railroad company was organized by an act of the legislature and authorized to construct its road between two points, and over certain streets and roads therein named. *Held*, that this constituted a practical location of its route and dispensed with the notice of the location of its route and of the filing of the map required by the general railroad acts. (*Matter of Coney Island and Brooklyn Railroad Co.*, 12 Hun, 451.)

Where a railroad corporation has made and filed a map and survey of the line of route it intends to adopt for the construction of its road, and has given the required notice to all persons affected by such construction, and no change of route is made as the result of any proceeding by any land-owner or occupant, it has thereby acquired a right to construct and operate its road upon such line, exclusive in that respect as to all other railroad corporations, and free from the interference of any party. (*Rochester H., etc., Railroad Co. v. The New York, L. E., etc., Railroad Co.*, 110 N. Y. 128.)

The notice required to be given by the above cited section (22) need be given only to actual occupants of the lands, and need not be given to owners of the lands not in occupation, except where the land is required for the construction of embankments or for the laying of the rails. (*New York, Lackawanna, etc., Railroad Co. v. Scheu*, 33 Hun, 148; *aff'd*, it seems, without opinion, 98 N. Y. 664.)

No. 427.

Petition by owner or occupant of land over which route of railroad is located for the appointment of commissioners to examine the route.

(Laws of N. Y. of 1890, chap. 565, § 6, as amended by chap. 676 of Laws of N. Y. of 1892.)

To Hon. A. B., justice of the Supreme Court in the ——— judicial district :

The petition of A. M. respectfully shows, that the (name of corporation) has made a profile and map of the route adopted by it in the county of ———, which map has been certified by the president and engineer (or, by a majority of the directors) of said corporation, and has filed the same in the office of the clerk of said county, on the ——— day of ———, 1——; that on the ——— day of ———, 1——, the said corporation gave written notice to your petitioner, an actual occupant (and the owner) of the land hereinafter described, over which land the route of said road is designated to pass, upon said map and profile, and which land has not been purchased by or given to said corporation, of the time and place of the filing of said map and profile as aforesaid, and that the said route passes over the said lands (owned and) occupied by your petitioner.

That your petitioner is aggrieved by the proposed location of said route, and that his objections to said route are as follows: (stating same), and that the route to which it is proposed by him to alter the same is as is laid down upon the survey, map and profile annexed to and accompanying this petition, which said map, survey and profile is of the said route designated by the said corporation, and of the proposed alteration thereof.¹

Wherefore your petitioner prays, that your honor will, pursuant to the provisions of section 6 of article 1 of chapter 565 of the Laws of New York of 1890, passed June 7, 1890, and known as the railroad law, as amended, appoint three disinterested persons, one of them to be a practical civil engineer, commissioners to examine the route of said road, and that

your honor will grant such other or further relief in the premises as may be proper and agreeable to law.³

Dated —, 1 —.

A. M.

(Verification by petitioner, as in form No. 323.)

(Annex survey, map and profile mentioned in petition.)

1. Copies of the petition, survey, map and profile are to be served upon the corporation and upon the owners and occupants of lands to be affected by such proposed alteration, with written notice of the time and place of the application, ten days previous to such application, which is to be made to a justice of the Supreme Court in the judicial district where the lands are situated.

2. See section 6 of chapter 565 of Laws of New York of 1890, which act took effect May 1, 1891, as to this proceeding. Said section 6 is a substitute for section 22 of chapter 140 of Laws of N. Y. of 1850, as amended by section 1 of chapter 560 of Laws of N. Y. of 1871, which latter sections are repealed by said section 6.

See, also, as to this proceeding, among other cases, *Matter of Norton*

v. Wallkill Valley Railroad Co. (63 Barb. 77); *Matter of New York and Boston Railroad Co.* (62 id. 85); *People, ex rel. Erie, etc., Railroad Co., v. Tubbs* (59 id. 401; aff'd, S. C., 49 N. Y. 356); *Matter of Lake Shore, etc., Railroad Co.* (89 id. 442); *Matter of New York, Lake Erie and Western Railroad Co.* (99 id. 388); *Matter of same company* (110 id. 388); *Matter of Hartman* (9 Abb. Pr. (N. S.) 124); *Matter of Central Railroad Co. of L. I.* (1 T. & C. 419); *People, ex rel. Niagara Bridge, etc., Railroad Co., v. Lockport, etc., Railroad Co.* (13 Hun, 211); *Matter of New York, Lake Erie, etc., Railroad Co.* (44 id. 215); *Matter of Niagara Falls, etc., Railway Co.* (46 id. 94); *New York and Albany Railroad Co. v. N. Y., W. Shore, etc., Railroad Co.* (11 Abb. N. C. 386; 19 id. 423, n.).

No. 428.

Notice of application to justice of Supreme Court for appointment of commissioners to examine route of railroad corporation.

(Laws of N. Y. of 1890, chap. 565, § 6, as amended by § 6 of chap. 676 of Laws of N. Y. of 1892.)

In the matter of the application of A. M., for appointment of commissioners to examine route of the (name of corporation), a railroad corporation.

Take notice that upon the petition, survey, map, profile, etc. (naming other motion papers), with copies of which you

are herewith served, an application will be made to Hon. A. O., a justice of the Supreme Court, in the — judicial district, at (the chambers of said justice, in the (city) of —), on the — day of —, 1—, at — o'clock in the — noon, for the appointment of commissioners, to examine the route of the road of said corporation, pursuant to statute, and for such other or further relief as may be proper and agreeable to law.¹

Dated —, 1—.

Yours, etc.,

M. N.,

Attorney for petitioner.

(Office address.)

To the (name of corporation) and A. B., etc., owners and occupants of lands to be affected by the proposed alteration.

1. See section 6 of chapter 565 of New York of 1892, and notes to Laws of New York of 1890, as form No. 427 as to this proceeding. amended by chapter 676 of Laws of

No. 429.

Order appointing commissioners to examine route of railroad.

(Laws of N. Y. of 1890, chap. 565, § 6, as amended by § 6 of chap. 676 of Laws of N. Y. of 1892.)

(Title of proceeding, as in form No. 428.)

On reading and filing the petition of A. M., dated —, 1—, praying for the appointment of commissioners, pursuant to section 6 of article 1 of chapter 565 of Laws of 1890, as amended by chapter 676 of Laws of New York of 1892, to examine the route of the road of the (name of corporation), and for such other relief as may be proper, and the map, survey and profile annexed to said petition and referred to therein, together with notice of this application thereupon at this time and place, with proof of service of copies of said petition more than ten days since on the said corporation and upon A. B., etc., owners or occupants of lands to be affected by the alteration proposed by said petitioner, and I having heard I. F., counsel for said petitioner, in behalf of said application, and (naming counsel for

parties appearing), do hereby appoint M. N., of —, I. J., of —, and P. R., of —, three disinterested persons, said M. N. being a practical civil engineer, commissioners to examine the route of the railroad of the (name of corporation) proposed by said corporation, and the route to which it is proposed to alter the same, and after hearing the parties to affirm the route originally designated, or adopt the proposed alteration thereof, as may be consistent with the just rights of all parties and the public, including the owners or occupants of lands upon the proposed alteration, but no alteration of the route shall be made except by the concurrence of the said M. N., nor which will cause greater damage or injury to lands, or materially greater length of road than the route designated by said corporation, nor which shall substantially change the general line adopted by the said corporation.

Dated at —, on this — day of —, 1—. ¹

A. O.,

Justice of the Supreme Court.

1. See section 6 of chapter 565 of The justice may, upon the hearing of Laws of New York of 1890, as the application, appoint three disinterested persons, one of whom amended by chapter 676 of Laws of New York of 1892, and notes to must be a practical civil engineer, as form No. 427, as to this proceeding. such commissioners.

No. 430.

Determination of commissioners appointed to examine the route of railroad.

(Laws of N. Y. of 1890, chap. 565, § 6, as amended by chap. 676 of Laws of N. Y. of 1892.)

We, the undersigned, commissioners appointed by an order made by Hon. A. O., justice of the Supreme Court of the — judicial district, in the above entitled proceeding, dated —, 1—, do hereby certify and determine as follows:

That we have, pursuant to the statute in such case made and provided, and in obedience to the directions of said order, examined the route proposed by the (name of corporation) and the route to which it is proposed to alter the same, and

have heard the parties and that we have affirmed (or, have adopted the proposed alteration of) the route originally designated by said corporation.¹ We have annexed hereto, marked "Schedule A," the testimony taken before us in the above entitled proceeding, also the petition, map, survey and profile made in the said proceeding are to be filed herewith.

In witness whereof, we have hereunto set our hands this — day of —, 1—, at the (city) of —.²

(Signatures of commissioners.)

(Annex and file petition, testimony, map, survey and profile.)

1. No alteration of the route shall be made, except by the concurrence of the commissioner who is a practical civil engineer, nor which will cause greater damage or injury to lands, or materially greater length of road than the route designated by the corporation, nor which shall substantially change the general line adopted by the corporation. (Laws of N. Y. of 1890, chap. 565, §6, as amended by chap. 676 of Laws of N. Y. of 1892.)

2. The commissioners shall, within thirty days after their appointment, make and certify their written determination, which, with the petition, map, survey and profile, and any testimony taken before them, shall be immediately filed in the office of the county clerk of the county. (Section 6, *supra*.) See, also, notes to form No. 427.

No. 431.

Notice of appeal from the decision of the commissioners appointed to examine the route of railroad.

(Laws of N. Y. of 1890, chap. 565, § 6, as amended by chap. 676 of Laws of N. Y. of 1892.)

(Title of proceeding, as in form No. 428.)

Take notice, that (naming appellant) hereby appeals to the General Term of the Supreme Court, from the decision of the commissioners, made in the above-entitled proceeding and filed in the county clerk's office of the county of —, on the — day of —, 1— (and that the appellant in-

tends to bring up for review, upon said appeal, the order entered in said proceeding, on the — day of —, 1—).¹

Dated —, 1—.

Yours, etc.,

A. M.,

Attorney for appellant.

(Office address.)

To F. P., attorney for (name respondent), respondent and the county clerk of the county of —.

1. Within twenty days after such filing, any party may, by written notice to the other, appeal to the General Term of the Supreme Court from the decision of the commissioners, which appeal shall be heard and decided at the next term held in the department in which the lands of the petitioners or any of them are situated, for which the same can be noticed according to the rules and practice of the court. (Laws of N. Y. of 1890, chap. 565, § 6, as amended by Laws of N. Y. of 1892, chap. 676.) See, also, notes to forms Nos. 427-430 generally as to this proceeding.

No. 432.

Order of the General Term, upon appeal from decision of commissioners appointed to examine the route of railroad.

(Laws of N. Y. of 1890, chap. 565, § 6, as amended by chap. 676 of Laws of N. Y. of 1892.)

At, etc. (as in form No. 349).

Title of proceeding, as in form No. 428.

The appeal of — from the decision of the commissioners appointed in the above-entitled proceeding, by order of Hon. A. O., a justice of the Supreme Court in the — judicial district, dated —, 1—, which decision was filed in the — county clerk's office, on the — day of —, 1—, having been heard at this term, it is hereby, on motion of A. M., counsel for the appellant (or, respondent), after hearing M. N. for the respondent (or, appellant), That the said decision of the said commissioners be and the same is hereby reversed (or, affirmed), and that the route of said railroad proposed by the said corporation be and the same is hereby affirmed,¹ (or, that the route of said railroad proposed by said —, be and the same is hereby adopted), with

— dollars, costs of the said appeal and disbursements for printing, to be paid by the — to the —.²

1. On the hearing of such appeal, of 1892.) See, also, notes to forms the court may affirm the route proposed by the corporation, or may adopt that proposed by the petitioner. Nos. 427-431, generally as to this proceeding.

2. As to costs upon an appeal in a special proceeding, see section 3240 (Laws of N. Y. of 1890, chap. 565, § 6, as amended by chap. 676 of Laws of N. Y. Code of Civil Procedure.

No. 433.

Certificate of change of route or termini of railroad.

(Laws of N. Y. of 1890, chap. 565, § 13, as amended by chap. 676 of Laws of N. Y. of 1892.)

Whereas, it was determined by a vote of two-thirds of all the directors of the (name of corporation), a domestic railroad corporation of the State of New York, at a meeting of said directors held at —, on the — day of —, 1—, it having appeared to them that the line could be improved thereby, that the route (or, a part of the route, or, the *termini*) of the road of said corporation should be altered (or, changed; or, should be located in the county of —, instead of in the county of —, named in its certificate of incorporation), a map and survey of which alteration (or, change; or, location) has been made and is to be filed with this certificate:

Now, therefore, pursuant to said resolution, and to section 13 of article 1 of chapter 565 of the Laws of New York of 1890, passed June 7, 1890, and known as the railroad law, as amended, it is hereby certified for the purpose of making such alteration (or, change) in said route (or, *termini*), that the said route of said road (or, of a part of the route of said road) has been and hereby is changed from the route thereof previously adopted in the manner indicated in said survey and on said map filed herewith (or, that the *termini* of said road have been changed from the *termini* thereof mentioned in the certificate of incorporation of said road to — and —, as laid down upon the said survey and map herewith filed).

In witness whereof the said corporation has caused its corporate seal to be hereunto affixed, and its president to sign the same on this — day of —, 1—.¹

[L. S.]

The (name of corporation).
by E. F., its president.

1. See section 13 of chapter 565 of Laws of New York of 1890 (p. 1087), which took effect May 1, 1891, as amended, as to this certificate. No portion of the track of any railroad, as described in its certificate of incorporation, is to be abandoned under that section. Said section 13 is a substitute for section 23 of chapter 140 of Laws of 1850, as amended by chapter 77 of Laws of 1876, and by chapter 634 of Laws of 1886, which

section is repealed by chapter 565 of Laws of 1890.

See *Buffalo, Corning and New York Railroad Co. v. Pottle* (23 Barb. 21); *Matter of New York, L. & W. Railroad Co.* (88 N. Y. 279; affg S. C., 25 Hun, 556); *Matter of Poughkeepsie Bridge Company* (108 N. Y. 483); *Matter of New York Central, etc., Railroad Co.* (77 id. 248).

Said section 13 was amended by chapter 676 of Laws of N. Y. of 1892.

No. 434.

Certificate of incorporation of railroad corporation for construction, etc., of railroad in foreign country.

(Laws of N. Y. of 1890, chap. 565, § 17, as amended by chap. 676 of Laws of N. Y. of 1892.)

We, the undersigned, A. B., whose post-office address is at —; C. D., whose post-office address is at —, etc., (stating name and post-office address of each subscriber to the certificate) in order to become a corporation formed for the purpose of constructing, maintaining and operating (or, of maintaining and operating) in a foreign country, to-wit, in — a railroad (already constructed)¹ for public use in the transportation of persons and property, and of constructing, maintaining and operating, in connection therewith, telegraph lines and lines of steamboats (or, sailing vessels), do hereby, pursuant to the provisions of article 1 of chapter 565 of the Laws of New York, passed June 7, 1890, known as the railroad law, as amended, execute and acknowledge the following certificate, to-wit:

First. (As in form No. 423.)

Second. (As in form No. 423.)

Third. (As in form No. 423.)

Fourth. (As in form No. 423.)

Fifth. (As in form No. 423.)

Sixth. (As in form No. 423.)

Seventh. (As in form No. 423.)

Eighth. (As in form No. 423.)¹

In witness, etc. (as in form No. 423).²

(Annex affidavit, form No. 424.)

1. By section 19 of chapter 565 of Laws of New York of 1890, which act took effect May 1, 1891, as amended by chapter 676 of Laws of New York of 1892, every such corporation is required to maintain its principal office within the State, and to have, during business hours, an officer or agent upon whom service of process may be made.

2. See sections 17-19 of chapter 565 of Laws of New York of 1890, as amended, as to this corporation and its additional powers. Said sections are substitutes for a portion of chapter 468 of Laws of 1861, as amended, sections 1, 2, 3, 5, 6, 9 and 13 of which act are repealed by chapter 565 of Laws of 1890.

See chapter 193 of Laws of New York of 1897, in relation to the consolidation of domestic and foreign railroad corporations.

No. 435.

Notice to railroad corporation by laborer of amount due him from contractors.

(Laws of N. Y. of 1890, chap. 565, § 30.)

To the (name of corporation):

Take notice that on the — day (or, days) of the month of — (and on the — day (or, days) of the month of —), in the year 1 —, labor was performed by the undersigned for A. B., contractor upon section — of the road of said corporation, in the construction of said road, to-wit, — days' labor at the price of — per day, and that said labor is unpaid for, the amount due for the same being the sum of — dollars.¹

Dated —, 1 —.

E. F.,

(By C. M., his attorney.)

— COUNTY, ss.:

E. F., being duly sworn, says: That of his own knowledge the statements contained in the foregoing notice subscribed by him (or, by C. M., as his attorney) are true.

E. F.

(Jurat, as in form No. 32.)

1. See section 30 of chapter 565 of Laws of New York of 1890, which act took effect May 1, 1891, as to this notice and service thereof. That

section is a substitute for section 12 of chapter 140 of Laws of 1850, as amended by chapter 669 of Laws of 1871, which section is repealed by chapter 565 of Laws of 1890. An action may be maintained against the corporation if commenced after the expiration of ten days, and within six months after the service of such notice upon the corporation, which is to be made within twenty

days after the performance of the labor.

See, also, *Balch v. The New York, etc., Midland Railroad Co.* (46 N. Y. 521); *Cummings v. Same* (1 Lans. 68); *Atcherson v. Troy & Boston Railroad Co.* (1 Abb. App. Dec. 18); *Gallagher v. Ashby* (26 Barb. 143); *Moore v. Taylor* (42 Hun, 45), among other cases construing section 12 above mentioned.

No. 436.

Notice of sale of unclaimed freight or baggage by railroad corporation.

(Laws of N. Y. of 1890, chap. 565, § 46, as amended by chap. 676 of Laws of N. Y. of 1892.)

Notice is hereby given, pursuant to law, that the following articles, packages and parcels of unclaimed freight (and baggage) will be sold at public auction by the (name of corporation), on the — day of —, 1—, at (state place of sale), at — o'clock in the — noon, said articles, packages and parcels having been in the possession of said corporation for the period of one year (and upwards), to-wit:¹

| Description of Article. | Place and Time When Left. | Name of Owner. |
|----------------------------|-----------------------------|----------------|
| One plough. | Albany, N. Y., May 1, 1889. | A. B. |
| Package, contents unknown. | " " Mar. 7, 1889. | Unknown. |

Dated —, 1—.

The (name of corporation) by (official title of agent making sale.)

1. See section 46 of chapter 565 of Laws of New York of 1890, which chapter went into effect May 1, 1891, and was amended by chapter 676 of Laws of 1892, as to this notice. That section is a substitute for sections 10, 11 and 12 of chapter 282 of Laws of

1854, which sections were repealed by chapter 565 of Laws of 1890, and for section 3 of chapter 444 of Laws of 1857, as amended by chapter 444 of 1884, which act was also repealed by said chapter 565 of 1890.

Perishable freight or baggage may

be sold without notice, as soon as it can be, upon the best terms that can be obtained (section 46, *supra*).

The notice is to be published once a week for not less than four weeks in newspapers published as follows : One in the county where the baggage remains unclaimed, one in the county where the sale is to be had, and one in the city of New York ; a copy is also to be posted in a conspicuous place at each depot or station, where any portion of such freight or baggage remains unclaimed, at least four

weeks before such sale, and a copy is to be served upon the comptroller of the State, at least two weeks before such sale.

See, also, as to disposition of proceeds, same section 46.

By the amendment of 1892, if the name and residence of the owner of any such property is known to, or can be ascertained by, the corporation it shall, forthwith, serve a copy of such notice upon such owner by mail.

No. 437.

Report to comptroller of sale of unclaimed freight, etc.

(Laws of N. Y. of 1890, chap. 565, § 46, as amended by chap. 676 of Laws of N. Y. of 1892.)

To the comptroller of the State of New York :

The (name of corporation) hereby makes the following report pursuant to statute, accompanying the payment of the sum of — dollars, arising from the sale, by it, of unclaimed freight (and baggage), which sale was made on the — day of —, 1—, at — o'clock in the — noon, at (state place of sale) pursuant to the annexed notice of sale :

That the following articles were sold at public auction on the day aforesaid, to-wit (describing articles sold) :

That the amount arising from the sale of said articles was — dollars, and that after deducting therefrom the charges and expenses incurred for transportation, storage, advertising, commissions for selling the property (and an amount previously paid for its loss or non-delivery), amounting to the sum of — dollars, there remains of said amount arising from said sale the sum of — dollars, which said amount is deposited with you herewith, for the benefit of the general fund of the State, to be held by you in trust for reclamation by the persons entitled to receive the same.

Proofs of the advertisement, etc., of said property pursuant to said statute (or, that said property was perishable) accompany this report, marked schedule A.

All of which is respectfully submitted.

Dated —, 1——.¹

(Name of corporation.)

by — (Treasurer.)

(Annex schedule A, form No. 438, and notice and affidavits thereto annexed.)

1. See section 46 of chapter 565 of Laws of New York of 1890, which took effect May 1, 1891, as to this report. That section is a substitute for sections 10, 11 and 12 of chapter 282 of Laws of 1854, and sections 3 and 4 of chapter 444 of Laws of 1857, which are repealed by said chapter 565 of Laws of 1890. As to amendment of that section in 1892, see note 1 to last form, No. 436.

No. 438.

Proofs of advertisement, accompanying report, form No. 437.

(Laws of N. Y. of 1890, chap. 565, § 46, as amended by chap. 676 of Laws of N. Y. of 1892.)

STATE OF NEW YORK, } ss.
County of — }

F. G., of —, being duly sworn, says, that he is the publisher (etc.) of the —, a newspaper published in the county of —, where the sale mentioned in the annexed notice was had (or, where the freight or baggage mentioned in the annexed notice remained unclaimed; or, in the city of New York), and that the said notice has been regularly published in the said — once a week for (four)¹ weeks previous to such sale, commencing on the — day of —, 1——.

F. G.

(Jurat, as in form No. 32.)

(Annex copy of notice of sale and affidavits of posting and of service on comptroller and owner.)

1. Not less than four weeks. See note 1 to form No. 436, as to this affidavit.

No. 439.**Oath of policemen appointed by the governor to act for railroad corporation.**

(Laws of N. Y. of 1890, chap. 565, § 58.)

COUNTY OF —, ss.:

I, A. B., of —, do solemnly swear (or, affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of policeman of the (name of company) according to the best of my ability.¹

A. B.

(Jurat, as in form No. 32.)

1. Section 58 of chapter 565 of Laws of New York of 1890, which took effect May 1, 1891, provides for the taking and subscribing of this oath and filing of same with the secretary of State within fifteen days after receiving his commission, and before entering upon the duties of his office. Section 58, above men-

tioned, is a substitute for section 3 of chapter 346 of Laws of 1863, as amended by section 1 of chapter 259 of Laws of 1866, and repealed by said chapter 565 of Laws of 1890.

As to appointment by governor of conductor or brakeman on any train conveying passengers as a policeman, see same section 58.

See *Dempsey v. N. Y. C. & H. R. R. Co.* (146 N. Y. 290).

No. 440.**Notice by railroad corporation that they no longer require the services of a policeman.**

(Laws of N. Y. of 1890, chap. 565, § 58.)

Notice is hereby given by the (name of corporation) that the said corporation no longer requires the services of M. N., a policeman appointed and designated by the governor of the State of New York, to act as policeman for said company at — (or, on train, etc.), by commission, dated —, 1—.

In witness whereof, the said company has caused its (secretary) to affix his name hereto this — day of —, 1—.¹

E. F.,

(Secretary.)

1. See section 58 of chapter 565 of Laws of New York of 1890, which took effect May 1, 1891, as to this notice. By that act chapter 346 of Laws of 1863 making similar provisions is repealed. See, also, note 1 to form No. 439.

No. 441.**Agreement for consolidation of railroad, etc., corporations.**

(Laws of N. Y. of 1890, chap. 565, §§ 70, 71, as amended by chap. 676 of Laws of N. Y. of 1892.)

It is hereby agreed by and between the undersigned, directors of the (name of one corporation), and of the (name of other corporation), that the said corporations and their respective railroads (or, bridges; or, tunnels), capital stock, franchises and property shall be consolidated, pursuant to the provisions of article 3 of an act of the legislature of the State of New York, passed June 7, 1890, known as the railroad law, as amended by chapter 676 of the Laws of 1892. And it is further agreed for the purpose of such consolidation pursuant to the provisions of said act, as follows:

First. That the terms and conditions of such consolidation and the mode of carrying the same into effect shall be as follows, to-wit (state same).

Second. That the name of the new corporation to be formed by such consolidation shall be the (name of new company).

Third. There shall be — directors of such new company and — officers thereof; to-wit, a (president, treasurer and secretary). The names and residences of the first directors thereof shall be A. B., of —; C. D., of —, etc., and the names of the first officers thereof shall be said A. B., who shall be the president thereof, said C. D., who shall be the treasurer thereof, and said E. F., who shall be the secretary thereof.

Fourth. The number of shares of the capital stock of said new company shall be — and the amount or par value of each share thereof shall be — dollars, and the manner of converting the capital stock of each of said corporations into stock of said new corporation shall be as follows (stating same).

Fifth. The directors and officers of such new corporation shall be chosen at (stating when and how).

(Add such other details as may be deemed necessary to perfect such new organization and the consolidation of such corporations.)

In witness whereof, the said directors have hereunto affixed their names and the respective corporate seals of said corporations, this — day of —, 1—. ¹

[L. S.]

(Signatures of directors.)

1. Section 70 of chapter 565 of the Laws of New York of 1890, as amended by chapter 676 of the Laws of New York of 1892, provides as follows: Any railroad or other corporation, organized under the laws of this State, or of this State and any other State, and owning or operating a railroad, bridge or tunnel, either wholly within, or partly within and partly without the State, or whose lines or routes of road have been located but not constructed, may merge and consolidate its capital stock, franchises, and property with the capital stock, franchises, and property of any other railroad, tunnel or bridge corporation or corporations organized under the laws of this State, or of this State and any other State, or under the laws of any other State or States, whenever the two or more railroads of the companies or corporations so to be consolidated, tunnels, bridges or branches or any part thereof, or the line or routes of their road, if not constructed, shall or may form a continuous or connected line of railroad with each other or by means of any intervening railroad bridge, tunnel or ferry, and any such consolidated corporation may thereupon construct or finish the construction of such continuous line of railroad, if not previously constructed, and operate the same, subject to all provisions of law applicable to such railroad corporations. Where the road to be operated is in

whole or in part a tunnel or sub-surface road, authorized by section 16 of this chapter, its consolidation with another road or roads under the provisions of this section shall not prevent any connecting railroad from having equal rights of transit for its passengers and freight through or over the tunnel or bridge of any such road, upon the same equitable terms, nor shall such consolidation be made where such tunnel or sub-surface road exceeds five miles in length. (Laws of 1890, p. 1103, chap. 565, art. 3, § 70, as amended by chap. 676 of Laws of N. Y. of 1892.)

Section 71, subdivision 1 of the same chapter, provides that said consolidation shall be made in the following manner:

First. The directors of the corporations proposing to consolidate may enter into a joint agreement, under the corporate seal of each corporation, for the consolidation of such corporations, and prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof, and who shall be the first directors and officers and their places of residence, the number of shares of the capital stock, the amount or par value of each share, and the manner of converting the capital stock of each corporation into that of the new corporation, and how and when the directors and

officers shall be chosen, with such other details as they shall deem necessary to perfect such new organization and the consolidation of such corporations. (Laws of N. Y. of 1890, p. 1103, chap. 565, as am'd by chap. 676 of Laws of N. Y. of 1892).

See, also, notes to form No. 442. Chapter 565 of 1890 repeals chapter 917 of Laws of 1869, containing similar

provisions to the above, and took effect May 1, 1891.

It is usual to insert the time of existence of railroad corporation at 1000 years. See, also, section 11 of chap. 687 of Laws of N. Y. of 1892, subdivision 1. See, also, *People ex rel. Scharz v. Cook* (110 N. Y. 443); *People ex rel. N. Y. Phonograph Co. v. Rice* (57 Hun, 487, aff'd S. C., 128 N. Y. 591).

No. 442.

Notice of meeting of stockholders to consider as to consolidation of railroad corporations.

(Laws of N. Y. of 1890, chap. 565, § 71, subd. 2, as amended by chap. 676 of Laws of N. Y. of 1892.)

To the stockholders (or, to A. B., stockholder)¹ of the (name of corporation):

You (and each of you) will please take notice (or, Notice is hereby given)² that a meeting of the stockholders of the (name of corporation), called for the purpose of taking into consideration an agreement made by and between the directors of said corporation and the directors of the (naming other corporation), dated —, 1—, for the consolidation of said corporations, then and there to be submitted to said stockholders (and for such other purposes as may come before said meeting), will be held at (the office of said company (number, etc., stating place), in the (city) of —), on the — day of —, 1—, at — o'clock in the — noon.³

(Yours, etc.,)

Dated —, 1—.

A. F.,

Secretary.

1. This direction, in parenthesis, is intended for the notices served personally upon the stockholders; the other for the published notice.

2. Insert clause in parenthesis in the published notice.

3. Subdivision 2 of section 71 of chapter 565 of Laws of New York of 1890, as amended by chapter 676 of Laws of New York of 1892, provides that if stockholders owning two-thirds of all the stock of each of such cor-

porations shall by a consent in writing, acknowledged as are deeds entitled to be recorded and endorsed upon said lease or agreement, signify their assent thereto, it shall be deemed and taken as the adoption of such agreement by and on behalf of such corporation, and the original or certified copy thereof shall be filed as hereinafter provided. If such agreement shall not be consented to in writing by holders of two-thirds

of the stock of either of such corporations as hereinbefore provided, such agreement (mentioned in subdivision 1 of that section, cited in note to form No. 441) shall be submitted to the stockholders of each of such corporations at a meeting thereof called separately for the purpose of taking the same into consideration. Due notice of the time and place of holding such meeting, and the object thereof, shall be given by each corporation to its stockholders by written or printed notices addressed to each of the persons in whose names the capital stock of such corporation stands on the books thereof, and delivered to such persons respectively, or sent to them by mail, when their post-office address is known to the corporation, at least thirty days before the time of holding such meeting, and also by a general notice published at least once a week for four weeks successively in some newspaper printed in the city, town or county where such corporation has its principal office or place of business. At such meeting of stockholders such agreement shall be considered, and a vote by ballot taken for the adoption or rejection of the same, and if the votes of the stockholders owning at least two thirds of the stock of each corporation present and voting in person or by proxy shall be for the adoption of such agreement,

then that fact shall be certified thereon by the secretaries of the respective corporations, under the seal thereof, and the agreement so adopted, or a certified copy thereof, shall be filed in the office of the secretary of State, and in the office of the clerk of the county where the new corporation is to have its principal place of business, and shall from thence be deemed and taken to be the agreement and act of consolidation of such corporations, and thereafter such corporations, parties thereto, shall be one corporation by the name provided in such agreement, but such act of consolidation shall not release such new corporation from any of the restrictions, liabilities or duties of the several corporations so consolidated. (Laws of N. Y. of 1890, p. 1104, art. 3, § 71, subd. 2, as amended by chapter 676 of Laws of N. Y. of 1892.)

Said section 71 is a substitute for section 2 of chapter 917 of Laws of 1869, which chapter is repealed by chapter 565 of Laws of N. Y. of 1890, which took effect May 1, 1891.

See, also, notes to forms Nos. 441, 443.

As to effect of consolidation, see sections 72-77 of chapter 565 of Laws of N. Y. of 1890. Section 72 was amended by chapter 362 of Laws of New York of 1891.

No. 443.

Certificate of adoption of agreement for consolidation of railroad corporations.

(Laws of N. Y. of 1890, chap. 565, § 71, subd. 2, as amended by chap. 676 of Laws of N. Y. of 1892.)

I, the undersigned, the secretary of the (name of corporation) do hereby certify, pursuant to statute, that at a meeting of the stockholders of said corporation, held at —, in the

(city) of —, in the county of —, on the — day of —, in the year 1—, at — o'clock in the — noon, which meeting was called pursuant to law, for the purpose of taking into consideration the within (or, foregoing) agreement, (*) the votes of the stockholders owning (more than) two-thirds of all stock of said corporation present and voting in person or by proxy, were given in the manner required by law for the adoption of said agreement.

In witness whereof, I have hereunto set my hand and the seal of said company, this — day of —, in the year —.¹

A. F.,

[L. S.]

Secretary.

1. See subd. 2 of section 71 of chapter 565 of Laws of New York of 1890, as amended by chapter 676 of Laws of New York of 1892, as to this certificate and see notes 1 and 3 to forms Nos. 441, 442. By section 80 of same act, as amended by said chapter 676, no railroad corporation or corporations owning or operating railroads whose roads run on parallel or competing lines, except street surface railroad corporations, shall merge or consolidate, or enter into any contract for the use of their respective roads, or lease the same the one to the other, unless the board of railroad commissioners of the State, or a majority of such board, shall consent thereto.

The roads must constitute a line or

route extending and continuing in substantially the same direction. (People v. Boston, Hoosac Tunnel and W. Railroad Co., 12 Abb. N. C. 230.)

Although the lines may not be parallel in a mathematical sense, they may be so within the meaning of the statute. (Id.)

An attempted consolidation of four companies, *held*, illegal and void on the ground that the agreement violated the restrictions imposed by the statute. (Id.)

See, also, Taylor v. Atlantic and Great Western Railroad Co. (57 How. Pr. 26); Mead v. N. Y., Housatonic, etc., Railroad Co. (45 Conn. 199); Tysen v. Wabash Railway Co. (15 Fed. Rep'r, 763).

No. 444.

Notice of meeting of stockholders of railroad corporation to consider question of leasing of road.

(Laws of N. Y. of 1890, chap. 565, § 78, as amended by Laws of N. Y. of 1892, chap. 676.)

To the stockholders of the (name of corporation):

Notice is hereby given, pursuant to statute, that a meeting of the stockholders of the (name of corporation) will be held at (name place of meeting), in the (city) of — (in the

county of —), on the — day of —, 1—, at — o'clock in the — noon, the object of which meeting will be to consider the question of the leasing of said road to the (name of lessee) for the period of — years.¹

Dated —, 1—.

A. B.,
Secretary.

1. See section 78 of chapter 565 of the Laws of New York of 1890, thereof. See, also, section 80 of which act took effect May 1, 1891, as same act, referred to in note 1 to amended by chapter 676 of Laws of form No. 443. New York of 1892, as to this notice,

No. 445.

Certificate of adoption of agreement for leasing of railroad.

(Laws of N. Y. of 1890, chap. 565, § 78, as amended by chap. 676 of Laws of N. Y. of 1892.)

As in form No. 443, to (*) and from thence as follows: Said agreement was approved by the vote of the stockholders of said corporation owning (more than) two-thirds of the stock thereof, present and voting in person or by proxy.¹

In witness, etc. (conclude as in form No. 443).

[L. S.]

A. F.,
Secretary.

1. See section 78 of chapter 565 of the Laws of New York of 1890, as to this certificate, and see note 1 to form amended by chapter 676 of the Laws No. 443.

ARTICLE 2.

FORMS RELATING TO STREET SURFACE RAILROADS.

(Laws of N. Y. of 1890, chap. 565, art. 4, as amended by Laws of N. Y. of 1892, chap. 676.)

No. 446. Consent of property-owners to construction of street surface railroad.

447. Notice of application to local authorities for consent to construction of street surface railroad.

448. Application to local authorities for consent to construction of street surface railroad.

449. Consent by local or municipal authorities to the construction and maintenance of street surface railroad.

450. Notice of sale of franchise of street surface railroad, by city containing twelve hundred and fifty thousand inhabitants.

No. 446.**Consent of property-owners to construction of street surface railroad.**

(Laws of N. Y. of 1890, chap. 565, § 91, as amended by chap. 676 of Laws of N. Y. of 1892.)

We, the undersigned, owners of (more than) one-half, in value,¹ of the property bounded on — street (or, name or describe avenue or highway), in the (city) of —, in the county of —, do hereby consent, pursuant to the provisions of article 4 of an act, etc. (describing act and giving title as in form No. 423), to the construction and operation of (branches of) the railroad of the (name of railroad corporation), through and along said — (naming street, avenue, highway, etc.), in the city (or, town; or, village) of —, in the county of —, and to the construction of such switches, sidings, turnouts and turntables, and suitable stands as may be necessary for the convenient working of such road.

In witness, etc. (as in form No. 402).²

(Signatures of property-owners.)

(Acknowledgment, as in form No. 89).³

1. The value of the property so bounded is to be ascertained and determined by the assessment-roll of the city, village or town in which it is situated, completed last before the local authorities shall have given their consent. (Laws of N. Y. of 1890, chap. 565, § 91, as amended by chap. 676 of Laws of N. Y. of 1892.)

2. See section 93 of chapter 565 of Laws of New York of 1890, which took effect May 1, 1891, as amended by chap. 676 of Laws of N. Y. of 1892, as to this consent. (Laws of N. Y. of 1890, p. 1108.)

It is provided by section 94 of the same act as follows: If the consent of the property-owners required by any provision of this article cannot be obtained, the corporation failing

to obtain such consents may apply to any General Term of the Supreme Court, held in the department in which it is proposed to construct its road, for the appointment of three commissioners to determine whether such railroad ought to be constructed and operated. For forms under this provision, see Lansing's Forms of Civil Procedure, vol. 3, pp 697-712.

3. The consent of such owners is to be acknowledged as are deeds entitled to be recorded. (Id.)

It was held not to be sufficient, under chapter 252 of Laws of N. Y. of 1884, which chapter is repealed by chapter 565 of Laws of 1890, and of the Constitution of New York, article 3, section 18, forbidding any street railroad except upon condition that

the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, to obtain the consent of the owners of one-half the property along the whole route, but each street along the route must be taken by itself, and not in

connection with the other streets, for such purpose. (*Hilton v. Thirty-fourth St. Railroad Co.*, 1 How. Pr. (N. S.) 453).

That the provisions of chapter 252 of Laws of New York of 1884 did not apply to underground street railroads, see *Matter of N. Y. District Ry. Co.* (107 N. Y. 42).

See, also, amendments to said section 91 by chapter 855 of Laws of New York of 1896, and previous statutes.

No. 447.

Notice of application to local authorities for consent to construction of street surface railroad.

(Laws of N. Y. of 1890, chap. 565, § 92, as amended by chap. 676 of Laws of N. Y. of 1892.)

Notice is hereby given that an application has been made in writing to the (common council) of the (city) of —, in the county of —, by the (naming company), pursuant to statute, for leave to construct and operate [extensions (or branches) of] a street surface (electric) railroad upon (naming streets, etc.), of said (city), with the switches, etc. (as in form No. 448), and that such application will first be heard and considered at a meeting of said (common council) to be held at the (city hall) in said (city), on the — day of —, at — o'clock in the — noon of that day.'

Dated —, 1 —.

M. F.,

Clerk.

1. See section 92 of chapter 565, page 1109, of Laws of New York of 1890, as amended by chapter 676 of the Laws of New York of 1892, as to this notice, and see notes to forms Nos. 446, 448, 449.

In cities the notice must be published daily for at least fourteen days in two of the daily newspapers of said city, if there be two, if not, in one, to be designated by the mayor. And in any village or town the notice must be published for at least fourteen days in a newspaper

published in said village or town, if any there shall be, if none, then daily in two daily newspapers, if there be two, if not, one published in the city nearest such city or town. (Laws of N. Y. of 1890, chap. 565, p. 1109, § 91, as amended by chap. 676 of Laws of N. Y. of 1892, which act of 1890 took effect May 1, 1891, and repeals chap. 252 of 1884.)

See, also, amendments to said section 92 by chapter 434 of Laws of N. Y. of 1893.

No. 448.

Application to local authorities for consent to construction of street surface railroad.

(Laws of N. Y. of 1890, chap. 565, § 92, as amended by chap. 676 of Laws of N. Y. of 1892.)

To the (common council) of the (city) of — in the county of —:

The petition of the (name of corporation) respectfully shows:

That your petitioner is a corporation formed pursuant to the provisions of an act of the legislature of the State of New York, known as the railroad law, passed June 7, 1890, as amended by chapter 676 of Laws of New York of 1892, for the purpose of building and operating (or, extending) a street railroad for public use in the conveyance of persons and property in cars for compensation in the city of —, in the county of —, upon and along the following streets and avenues of the said city, that is to say: From, etc. (stating same as set forth in certificate of incorporation), together with all such switches, turnouts and turntables and suitable stands as may be necessary for the convenient working of said road, and that the amount of capital stock required by section 2 of said act has been subscribed in good faith to said corporation, and ten per cent thereof has been paid in good faith and in cash to the directors named in the certificate of incorporation of said corporation. All of which will more fully appear by inspection of the said certificate of incorporation and the proofs of the subscription and payment of said stock, duly filed and recorded in the office of the secretary of State at Albany, on the — day of —, 1—.

And your petitioner further shows that under the provisions of said act of June 7, 1890, as amended as aforesaid, your petitioner is not authorized to construct, maintain or operate its railroad, unless upon condition that the consent of the local authorities having control of that portion of the streets or highways upon which it is proposed to build such railroad shall have been first obtained.

That at a meeting of the board of directors of your petitioner, duly held at —, on, etc., at which all the members of the said board were present (or, of which all of the said directors were duly notified and at which (a majority) of said directors, constituting a quorum of said board, were present), a resolution was passed authorizing the making of this application.¹

Wherefore, your petitioner prays the consent of your honorable body to the construction, maintenance and operation (or, the extension) of a railroad on the surface of the soil through, upon and along the said streets (avenues, roads or highways) of said (city), and also to the construction of such switches, turnouts and turntables, and suitable stands, as may be necessary for the convenient working of such road.²

Dated —, 1 —.

The (name of company).
by M. F., its president (etc.)

F. & G., Attorneys for Petitioner,
(Office address.)

STATE OF NEW YORK, }
County of —, } ss.:

M. F., of —, being duly sworn, says, that he is the (president) of the (name of corporation); that he has read the foregoing petition subscribed by him, and that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

M. F.

(Jurat, as in form No. 32.)

1. See *The People's Bank v. St. Anthony's Roman Catholic Church* (39 Hun. 498), as to the necessity for corporate action; and as to quorum of board of directors of corporation, see Laws of N. Y. of 1890, ch. 563, § 17, as amended by ch. 687 of Laws of N. Y. of 1892, § 29.

2. Generally as to the application, see Laws of N. Y. of 1890, chap. 565, § 92, which took effect May 1, 1891, as amended by chapter 676 of Laws of N. Y. of 1892, and by which act of 1890, Laws of N. Y. of 1884, chap. 252, § 4 of which relates to this applica-

tion is repealed. See also amendments to sections 90-102 of chapter 565 of Laws of 1890 by chapter 434 of Laws of 1893, and by other statutes, referred to in notes to forms contained in this article.

The consent of the local authorities shall in all cases be applied for in writing, and when granted shall be upon the expressed condition that the provisions of article 4 of the act pertinent thereto shall be complied with, and shall be filed in the office of the county clerk of the county

in which such railroad is located. (Id.)

Any consent given by said local authorities shall cease and determine at the expiration of two years thereafter, and every such consent heretofore given to a corporation incorporated under chapter 252 of the Laws of 1884 for the purpose of constructing and operating a street surface railroad only wholly south of the Harlem river shall continue until June 30, 1893, when it shall cease,

unless prior thereto the consent of a sufficient number of the property-owners or the order of the General Term in lieu thereof, shall have been first obtained. (Id., § 93, as amended by said chapter 676)

See as to appointment and determination of commissioners by the General Term on failure to obtain the consent of property-owners, section 94, id., and note 2 to form No. 446.

No. 449.

Consent by local or municipal authorities to the construction and maintenance of street surface railroad.

(Laws of N. Y. of 1890, chap. 565, § 92, as amended by chaps. 306 and 676 of Laws of N. Y. of 1892.)

Whereas, an application by petition, in writing, has been made to the (common council) of the (city) of —, in the county of —, by the (name of corporation) for leave to construct, maintain and operate, use (or, extend) (branches of) a railroad by said company on the surface of the soil, through, upon and along the following streets (avenues, roads or highways), of the said (city), viz.: (stating same), and also for leave to construct such switches, sidings, turnouts and turntables and suitable stands as may be necessary for the convenient working of such road.

And whereas, the said common council, before acting upon such application, have given public notice thereof, and of the time and place when such application would be first considered, by a notice published according to law daily for at least fourteen days in two daily newspapers in said (city), [or, otherwise according to the fact].¹

And whereas, at the time and place appointed by said notice for the consideration of such application, the said application was duly considered and the said company and the persons appearing at said time and place were heard in regard thereto.

And whereas, it has been determined by said (common council) that (its) consent shall be given to the construction, maintaining and operation of said railroad, and of such switches, sidings, turnouts and turntables and suitable stands, as may be necessary for the convenient working of said road :

Now, therefore, it is hereby resolved that the said consent of said (common council) is hereby given pursuant to law, to the said (name of company) to construct, maintain, operate and use (or, to extend) a railroad (or, branches) on the surface of the soil, through, upon and along the following streets (avenues, roads or highways, etc.) of said (city), viz.: (stating same) and leave is also hereby given to construct upon said streets, etc., such switches, turnouts and turntables and suitable stands as may be necessary for the convenient working of said road.

The above-mentioned consent is given, however, upon the express condition (or, conditions) :²

[First.] That the provisions of article 4 of an act of the legislature of the State of New York, passed June 7, 1890, known as the railroad law, as amended by an act of the said legislature, passed April 15, 1892, pertinent thereto, shall be complied with.

[Second. That the right, franchise and privilege of using said streets, highways, avenues, parks and public places shall be sold at public auction to the bidder who will agree to give the said city the largest percentage per annum of the gross receipts of such corporation, with a bond or undertaking in such form or amount and with such conditions and sureties as may be required or approved by the comptroller (or, name other chief fiscal officer) of the said city for the fulfillment of such agreement and for the commencement and completion of its railroad within the times specified therefor by said article as amended as aforesaid, according to the plan (or, plans) and on the route (or, routes) above specified for its construction.

[Third.] That the bidder to whom such right, franchise and privilege may be sold must be a duly incorporated railroad corporation of said State, organized to construct, maintain and operate a street railroad of the said city of —,

and that no such corporation shall be entitled to bid at such sale unless at least five days prior to the day fixed for such sale, or five days prior to the day to which such sale shall have been duly adjourned, the said corporation shall have filed with the comptroller (or, name other chief fiscal officer) of said city, a bond in writing and under seal, with sufficient sureties to be approved by such chamberlain (or, name other officer), conditioned as required by section 93 of said article, as amended as aforesaid.]³

[Third. That but one fare shall be exacted for passage over such branch or extension, and over the line of road which has so applied therefor as aforesaid ; and further, that if such right shall be purchased by any corporation other than the said applicant, that the gross receipts from joint business shall be divided in proportion that the length of such extension or branch shall bear to the entire length of its road, and of such branch or extension.]⁴

1. See section 92 of chapter 565 of Laws of New York of 1890, as amended by chapters 306 and 676 of Laws of New York of 1892, as to such notice (form No. 447) and its publication.

2. See sections 92 and 93 of chapter 565 of Laws of New York of 1890, as amended by chapters 306 and 376 of the Laws of New York of 1892, as to the application and consent. See, also, notes to forms Nos. 446-450.

Upon an application for the appointment of commissioners to determine whether a surface railway should be constructed and operated in Broadway in the city of New York, under chapter 252 of Laws of 1884, repealed by the above-mentioned act; *Held*, that the consent of the local authorities need not be obtained before the consent of the property-owners or the appointment of commissioners is obtained. The act does not prescribe the order of these several steps. (*Matter of Broadway Surface Railroad Co.*, 34 Hun, 414.)

3. This condition must be contained in the consent, in the case of cities containing twelve hundred and fifty thousand inhabitants or more, according to the last Federal census or State enumeration. (Laws of N. Y. of 1890, chap. 565, p. 1109, § 93, as amended by chaps. 306 and 676 of Laws of N. Y. of 1892.)

All consents given by the municipal authorities shall cease and determine at the expiration of two years thereafter, and all consents heretofore given to a corporation incorporated under chapter 252 of Laws of 1884, for the purpose of constructing and operating a street surface railroad only wholly south of the Harlem river shall continue until June 30, 1893, when they shall cease, unless prior thereto the consent of a sufficient number of the property-owners, or the order of the General Term in lieu thereof, shall have been first obtained. (Same section as amended.)

Section 94 of the same chapter pro-

vides for the appointment by the General Term of the Supreme Court, held in the department in which it is proposed to construct the road, of three commissioners to determine whether such railroad ought to be constructed and operated, in case the consent of property-owners required by any provisions of article 4 of chapter 565 of Laws of New York of 1890, cannot be obtained. For proceedings under that section, see forms Nos. 493-501, contained in volume 3 of Lansing's Forms of Civil Procedure, prepared under chapter 252

of Laws of 1884, repealed by said chapter 565 of Laws of 1890. The provisions of chapter 252 in regard to such proceedings are very similar to those of the above-mentioned act of 1890. The said forms may be adapted also to the extension of the route of a street railroad company over rivers provided for by section 96 of chapter 565 of Laws of 1890.

4. See provisions of section 1 of chapter 306 and section 93 of chapter 676 of Laws of New York of 1892, amending section 93 of chapter 565 of Laws of 1890.

No. 450.

Notice of sale of franchise of street railroad, by city containing twelve hundred and fifty thousand inhabitants.

(Laws of N. Y. of 1890, chap. 565, § 93, as amended by chaps. 306 and 676 of Laws of 1892.)

Whereas, an application has been heretofore made to the (common council) of the city of — by the (naming corporation) for consent to the construction, building and operation (or, extension) of a street railroad, the route of which is to be upon the following streets (highways, avenues, parks and public places) of the said city, viz.: (naming same).

And whereas, a resolution has been duly passed by the said common council, on the — day of —, 1—, providing for the sale, pursuant to the provisions of article 4 of an act of the legislature of the State of New York, passed June 7, 1890, known as the railroad law, as amended by chapter 676 of Laws of New York of 1892, at public auction, of the right, franchise and privilege of using such streets, etc., to the bidder who, being a duly incorporated railroad corporation of the State of New York, organized to construct, maintain and operate a street railroad in the said city of —, will agree to give the said city the largest percentage per

annum of the gross receipts of such corporation, with a bond or undertaking in such form and amount and with such conditions and sureties as may be required and approved by the comptroller (or, name other chief fiscal officer) of said city, for the fulfillment of such agreement; and for the commencement and completion of its railroad within the times specified therefor by said article, as amended as aforesaid, to-wit: (stating same, as given in section 99), according to the plan or plans, and on the route (or, routes) above mentioned, fixed for its construction.

Now, therefore, notice is hereby given, pursuant to said law, that the said right, franchise and privilege will be sold at public auction, at (state place of sale) on the — day of —, 1—, at — o'clock in the — noon, and that the consent of the said common council to the construction and operation (or, extension) of such street railroad will be given to the purchaser, upon the following conditions in addition to those already mentioned and set forth, to-wit (naming same as stated in the resolution, form No. 449.) The said sale will be made upon the following terms, viz.: (stating same).¹

Dated —, 1—.

F. M.,

(Comptroller) of the city of —.

1. This notice is required to be published for at least three successive weeks, and in any city having two or more daily newspapers, at least three times a week in two of such papers to be designated by the mayor, and in any city where two daily newspapers are not published, at least once a week in a newspaper published therein to be designated by the mayor. The comptroller or other chief fiscal officer of the city shall attend and conduct such sale and may twice adjourn the same, but not more than four weeks in all, and shall cancel any bid if the bidder shall not have furnished adequate security entitling such bidder to bid, or shall otherwise fail to comply with the terms and conditions of sale, and shall resell the consent and license in the same manner as hereinbefore provided for the first sale. (Laws 1890, chap. 565, § 93, which act took effect May 1, 1891, as amended by chapters 306 and 676 of Laws of New York of 1892, but the provisions of said section 93 are to apply to all applications for such consents, made under any statute either before or after the passage of that chapter, and not finally acted upon at the time of its passage.) (Id., § 93 as amended.)

ARTICLE 3.

FORMS RELATING TO OTHER RAILROADS IN CITIES AND COUNTIES.

(Laws of N. Y. of 1890, chap. 565, art. 5, as amended by chap. 676 of Laws of N. Y. of 1892.)

- No. 451. Application to supervisors for steam railway in streets, etc., of city or county,
452. Order of Supreme Court appointing commissioners to determine necessity of a steam railway in the streets, etc., of city or county.
453. Oath of commissioners appointed by order of the court, form No. 452.
454. Bond of commissioners appointed by order, form No. 452.
455. Notice of meeting of commissioners appointed by order, form No. 452, of meeting for the purpose of appraisal of property.
456. Bond of corporation to be given in lieu of deposit of money and securities.
457. Certificate of incorporation of railway company prepared by such commissioners.
458. Notice of meeting of subscribers to capital stock of railway corporation organized by the commissioners.
459. Affidavit of directors to be annexed to, form No. 457.
460. Certificate of commissioners appointed to determine necessity of steam railway in city or county.
461. Report of commissioners appointed to determine upon necessity of steam railway in streets, etc., of city or county.
462. Notice of motion to confirm commissioners' report, form No. 461.
463. Application for authority to abandon or change part of route by railway corporation.
464. Report of commissioners appointed pursuant to application, form No. 463.

No. 451.

Application to supervisors for steam railway in streets, etc., of city or county.

(Laws of N. Y. of 1890, chap. 565, § 120)

To the board of supervisors of the county of — (or, to the mayor of the city of —, in the county of —):¹

The petition of the undersigned respectfully shows: That they are householders and tax payers of the said city (or, county); that there is need in said county (or, city) of a steam railway in the streets (avenues and public places) thereof, for the transportation of passengers (mails and freight). Your petitioners therefore apply for the construction of such

a railway in the streets, etc., of said city (or, county), pursuant to law, and to the provisions of article 5 of chapter 565 of the Laws of New York, passed June 7, 1890, and known as the railroad law, as amended, and your petitioners will ever pray, etc.²

Dated —, 1—.

(Signatures of petitioners.)

(CITY AND) COUNTY OF —, ss. :

A. B., of —, being duly sworn, says: That he is one of the above-named petitioners, and signed the foregoing petition; that said petitioners are known by deponent to be tax payers and householders of (the city of —, in) the county of —, and that he knows the signatures to the foregoing petition to be the genuine signatures of said petitioners, and saw said petitioners sign said petition.³

A. B.

Sworn before me, this — }
day of —, 1—.

F. M.,

Justice of the Supreme Court.

I, M. N., mayor of the city of —, in the county of —, and State of New York, do hereby pursuant to the requirements of section 120 of article 5 of chapter 565 of the Laws of New York of 1890, known as the railroad law, as amended, approve of the within (or, foregoing) application and direct that the same may be presented to the Supreme Court.⁴

Dated —, 1—.

M. N.,
Mayor.

1. If the railway is to be built wholly within the limits of a city, the application must be made to the mayor thereof, and if partly within and partly without the limits of a city, to both the supervisors and the mayor, otherwise, to the board of supervisors of the county. (Laws of N. Y. of 1890, chap. 565, § 120, which act took effect May 1, 1891, and repealed among other sections of chap. 506 of the Laws of 1875, section 1 of that act relating to the same subject.)

2. See section 120 (article 5) of chapter 565 of Laws of New York of 1890, as to this application, and see preceding note to this form.

3. An application under the act of 1875, chapter 606, section 1 of which act provided for an application similar to that made by the above petition, was signed by ten more than the requisite number of tax payers and

householders. It was verified by one of the subscribers, who stated in his affidavit that he knew each and all of the subscribers except five, and saw them sign. Another subscriber swore to the same as to four of the five, and a Supreme Court justice certified that the statements were sworn to before him. *Held*, that the verification was sufficient; that it was not essential that the application should be verified by each of the subscribers. (Matter of Kings County Elevated Railroad Co., 105 N. Y. 97.)

See, also, preceding note 1 to this form.

4. The approval of the mayor and board of supervisors must be given to the application and its presentation to the Supreme Court, authorized by them, where the road lies partly within and partly without the limits of a city. Such approval and authority must be given by the mayor if the road lies wholly within the limits of a city, if the road lies wholly without such limits, by the board of supervisors of the county. (Laws of N. Y. of 1890, chap. 565, § 120.)

No. 452.

Order of Supreme Court, appointing commissioners to determine the necessity of a steam railway in the streets, etc., of a city or county.

(Laws of N. Y. of 1890, chap. 565, § 120.)

At, etc. (as in form No. 329).

(Title of proceeding, as in form No. 453.)

On reading and filing the application of (more than) fifty householders and tax payers of the city of —, in the county of —, to the mayor of the city of — (and to the board of supervisors of the county of —), for the building of a street railway in the streets, etc., of said city (and county), for the transportation of passengers, mails (and freight), with the approval of said mayor (and a duly certified copy of the resolution of said board of supervisors approving the same), and the direction of said mayor (and board of supervisors) that said application may be presented to the Supreme Court indorsed thereupon (and annexed thereto), and on motion of C. F., of counsel for said applicants:

It is hereby ordered, that F. C., of —, G. R., of —, etc. (naming five commissioners)¹, be and they are hereby appointed as commissioners pursuant to the provisions of section 120 of article 5 of chapter 565 of the Laws of New York of 1890, known as the railroad law, to determine the necessity of such railroad, the route thereof, the time within which and the conditions upon which it shall be constructed, the

damages to the property owners along the line thereof, and all the matters lawfully submitted to them, and discharge the duties imposed upon them by law.²

1. The commissioners are to be residents of the city, if the railway is to be built wholly within the city, and of the county, if it is to be built wholly or partly outside of the limits of a city. (Laws of N. Y. of 1890, chap. 565, § 120.)

2. See, generally, as to the appointment, section 120 of chapter 565 of Laws of New York of 1890, which act took effect May 1, 1891, and see, also, notes to last form, No. 451, as to this proceeding.

No. 453.

Oath of commissioners appointed by order of court, form No. 452.

(Laws of N. Y. of 1890, chap. 565, § 121.)

SUPREME COURT — COUNTY OF —.

In the matter of the applica-
tion of H. R. and others
for the construction of a
railway in the streets of the
(city) of —, in the county
of —.

— COUNTY, ss.:

We (naming commissioners), commissioners appointed in the above-entitled proceeding, by order of the Supreme Court, made at a Special Term thereof, held at the (city) of —, on the — day of —, 1—, do hereby severally solemnly swear (or, affirm) that we will support the Constitution of the United States and the Constitution of the State of New York, and that we will faithfully discharge the duties of the office of such commissioners to the best of our ability.¹

(Signatures of commissioners.)

(Jurat, as in form No. 32.)

1. As to this oath, see section 121 of chapter 565 of Laws of New York of 1890, which act took effect May 1, 1891. See, also, N. Y. State Const.,

art. 12, § 1; Birdseye's R. S., etc., 647. The oath must be filed within ten days after the appointment of the commissioners.

No. 454.

Bond of commissioners appointed by the Supreme Court, by order, form No. 452.

(Laws of N. Y. of 1890, chap. 565, § 121.)

As in form No. 302, to (*) and thence as follows: That whereas, the above bounden A. B. (naming commissioner) was by an order of the Supreme Court, made at a Special Term thereof, held at the (city) of —, on the — day of —, 1—, appointed one of the commissioners, pursuant to section 120 of article 5 of chapter 565 of the Laws of New York of 1890, known as the railroad law, to determine the necessity of a steam railroad in the streets, etc., of the (city of —, in the) county of —, the route thereof, the time within which and the conditions upon which it shall be constructed, the damages to the property owners along the line thereof, and all the matters lawfully submitted to them, and discharge the duties imposed upon them by law:

Now,, therefore, the condition of this obligation is such that if the said (naming commissioner) shall faithfully perform the duties of the office of such commissioner without fraud or other delay, then the preceding obligation to be void, otherwise to remain in full force and virtue.¹

(Signatures, and seals of commissioner
and sureties.)

Sealed and delivered }
in presence of }
F. R.

(Acknowledgment or proof, as in form No. 89; affidavit by sureties, as in form No. 220.)

I certify that I find the sureties in the foregoing bond sufficient, and do approve and allow the same.

Dated —, 1—.

W. C.,
Justice of Supreme Court.
— Department.²

1. The bond of the commissioner, penal sum of \$25,000, is to be executed with two or more sureties, in the executed within ten days after the ap-

pointment of the commissioners, and before entering upon the discharge of any of his duties, by each commissioner; and is to be filed in the office of the clerk of the county. (Laws of N. Y. of 1890, chap. 565, § 121.)

2. The bond must be approved by a justice of the Supreme Court of the department in which the railway is to be built. (Id., § 121.)

No. 455.

Notice of meeting of commissioners appointed by order, form No. 452, for the purpose of appraisal of property.

(Laws of N. Y. of 1890, chap. 565, § 125, as amended by Laws of N. Y. of 1892, chap. 676.)

(Title of proceeding, as in form No. 453.)

Notice is hereby given that the undersigned, appointed by an order of the Supreme Court made at a Special Term thereof, held at the (city) of —, on the — day of —, 1—, as commissioners to determine the necessity of a steam railroad in the streets, etc., of the (city of —, in the) county of —, and for other purposes mentioned in said order, will meet at (name place of meeting), on the — day of —, 1—, at — o'clock in the — noon, to hear the owners, or persons interested in the real estate, bounded upon (that portion of) — street, etc., upon which it is proposed to construct and operate such railway to be caused by the construction and operation thereof.¹

Dated —, 1—.

(Signatures of commissioners)
Commissioners.

1. See section 125 of chapter 565 of Laws of New York of 1890, which took effect May 1, 1891, as amended by chapter 676 of Laws of New York of 1892, as to this notice, which is to be published for at least ten days

consecutively, in at least two newspapers in the county where such railway is to be constructed. For report of commissioners, see form No. 461, and sections 125 and 133, as amended, of the act above referred to

No. 456.**Bond in lieu of deposit of money and securities to be given
by railroad corporation.**

(Laws of N. Y. of 1890, chap. 565, § 125, as amended by
chap. 676 of Laws of N. Y. of 1892.)

As in form No. 302, except as to obligee, to (*) and from
thence as follows:

That, whereas, in the matter of, etc., taken pursuant
to section 125 of article 5 of chapter 565 of the Laws of
New York of 1890, known as the railroad law, as
amended by chapter 676 of the Laws of New York of 1892,
an order was made at a General Term of the Supreme Court,
held in and for the — Department at, etc., on the — day
of —, 1—, requiring the said (name of corporation) to
give its bond, with sureties and to the effect hereinafter men-
tioned, as provided by said section as amended, in lieu of
the deposit of money or securities as prescribed by said
section:

Now, therefore, the condition of this obligation is such
that if the said (naming corporation) before constructing or
operating its railway in front of the premises of C. F.,
situated, etc., and described as follows (describing same),
shall pay to the said C. F., the owner of said above
described real property, all the damages sustained, or which
will be sustained by him, as fixed and determined by the
commissioners appointed in said proceeding, and the costs
allowed, if any, then this obligation to be void, otherwise to
be and remain in full force and virtue.¹

(Signatures of obligors.)

Sealed and delivered in presence of

M. N.

(Acknowledgment, etc., as in form No. 89; justification of
sureties, as in form No. 220; approval by court.)

1. See section 130 of chapter 565 amended by chapter 676 of Laws of
of Laws of New York of 1890, as New York of 1892, as to this bond.

No. 457.

Certificate of incorporation of railway corporation, prepared by commissioners pursuant to section 126 of article 5 of chapter 565 of Laws of New York of 1890.

(Laws of N. Y. of 1890, chap. 565, § 126.)

We, etc. (as in form No. 423, to (*), (substituting the words "article 5" for "article 1"):

First. That the name of said corporation shall be the (insert name).¹

Second. That the said corporation shall continue for the term of — years.

Third. That the kind of road to be built (or, operated) by said corporation shall be (stating same).

Fourth. That the said road shall commence at, etc. (stating point of commencement), and shall terminate at, etc. (stating point of termination), and shall be of the length of —.²

Fifth. Said road shall be located in the county of — (or, in part in the county of —, and in part in the county (or, counties) of —).

Sixth. The amount of the capital stock of said corporation shall be — dollars, which is to be divided into — shares of — dollars each,³ of which said A. B. agrees to take — shares; said C. D. agrees to take — shares (and so on, stating as to each subscriber to the certificate the number of shares to be taken by him). [Said stock shall consist of — shares of common stock and of — shares of preferred stock, the rights and privileges of the latter over the former being, etc. (stating same).]

Seventh. A. B., whose post-office address is (stating same); C. D., whose post-office address is (stating same); E. F., etc. (naming at least nine directors, and stating in like manner their post-office addresses), shall be the directors of said corporation who shall manage its affairs for the first year.

Eighth. The principal office of said corporation shall be located at the (city) of —, in the county of —, in the State of New York.

Ninth. (State here the several conditions, requirements and particulars determined by said commissioners pursuant to the provisions of article 5 of chapter 565 aforesaid, as amended by chapter 676 of Laws of New York of 1892, and provide for the release and forfeiture to the supervisors of the county, or, if the road is to be constructed wholly or partly within a city, to such city, of all rights and franchises acquired by such corporation in case such railway or railways shall not be completed within the time and upon the conditions herein provided).

In witness whereof, we have hereunto set our hands this — day of —, 1—, at the (city) of —.⁴

(Signatures of subscribers.)

(Certificate of acknowledgment by corporators, as in form No. 89.)

(Affidavit, as in form No. 424.)

- | | |
|---|--|
| 1. See note 2 to form No. 402. | Matter of Kings County Elevated |
| 2. See form No. 423, subdivision fourth, and note 3 to that form. | Railroad Co. (105 N. Y. 97, 109, rev'g S. C., 41 Hun, 425); Matter of Union |
| 3. See note 4 to form No. 423. | Elevated Railroad Co. of Brooklyn |
| 4. See as to this certificate sections 2, as amended by chapter 676 of Laws of New York of 1892, and 126 of chapter 565 of Laws of New York of 1890, which took effect May 1, 1891; as to organization of corporation, and further proceedings of commissioners, see sections 127 and 128 of same chapter. See, also, | (112 N. Y. 61); New York Cable Co. v. Mayor, etc., of New York (104 id. 1); Matter of New York Cable Railroad Co. (109 id. 32, 39); Matter of same company (40 Hun, 1), which cases were decided under chapter 606 of Laws of 1875, for which article 5 of chapter 565 of Laws of 1890 is substituted. |

No. 458.

Notice of meeting of subscribers to capital stock of railroad corporation organized pursuant to article 5 of chapter 565 of Laws of New York of 1890.

(Laws of N. Y. of 1890, chap. 565, § 127.)

Notice is hereby given, pursuant to section 127 of article 5 of chapter 565 of the Laws of New York of 1890, by the undersigned commissioners appointed pursuant to the provisions of said article, that a meeting of the subscribers to

the capital stock of the (name of corporation) for the organization of said corporation, will be held at (name place of meeting), in the (city) of —, in the county of —, on the — day of —, 1—, at — o'clock in the — noon, and that (naming inspectors), are hereby appointed by us as inspectors of election to serve thereat.¹

Dated —, 1—.

(Signatures of commissioners.)

Commissioners.

1. See section 127 of article 5 of accordance therewith; and see Matter of Kings County Elevated Railroad (105 N. Y. p. 109).
chapter 565 of Laws of New York of 1890, which act took effect May 1, 1891, as to this notice and meeting in

No. 459.

Affidavit of directors to be annexed to form No. 460.

(Laws of N. Y. of 1890, chap. 565, § 128.)

STATE OF NEW YORK, } ss.:
County of —, }

A. B., of —; C. D., of —; and E. F., of —, being duly sworn, each for himself, deposes and says, that he is a director of the (name of corporation), elected at a meeting of the subscribers to the capital stock of said corporation, held at —, on the — day of —, 1—; that the full amount of the stock of said corporation (or, that an amount of the capital stock of said corporation proportioned to the part of the railway mentioned, etc., directed by the commissioners to be constructed), has been subscribed in good faith to construct, maintain and operate the (said) railway (mentioned in the certificate of incorporation thereof).¹

A. B.

C. D.

E. F.

(Jurat, as in form No. 32.)

1. See sections 127 and 128 of article 5 of chapter 565 of Laws of New York of 1890, as to this affidavit and its contents. It is required to be made in duplicate five days after the reception by the directors of the certificate, form No. 460, and filed therewith.

No. 460.**Certificate of commissioners appointed to determine necessity of steam railway, etc., in city or county.**

(Laws of N. Y. of 1890, chap. 565, § 128.)

We (naming commissioners), commissioners, appointed by an order of the Supreme Court, made at a Special Term thereof, held at the (city) of — on the — day of —, 1—, pursuant to the provisions of article 5 of chapter 565 of the Laws of New York of 1890, known as the railroad law, as amended, to determine the necessity of a steam railway in the streets (avenues and public places of (the city of —, in) the county of —, for the transportation of passengers, mails (and freight); the route thereof, the time within which and the conditions upon which it shall be constructed, the damages to the property owners along the line thereof, and all the matters lawfully submitted to us, and to discharge the duties imposed upon us by law, do hereby certify according to law and to the provisions of section 126 of said article, as follows:

That within ten days after our appointment, and before entering upon the discharge of any of the duties of our office, each of us took and subscribed the constitutional oath of office and executed a bond to the people of the State in the penal sum of twenty-five thousand dollars, with two sureties, which bond was approved by E. R., a justice of the Supreme Court of the — Department, in which the said railway is to be built, and conditioned for the faithful performance of the duties of his office, which said bonds and oaths were duly filed in the office of the clerk of the county of —.

That we met within fifteen days after our appointment, to wit: on the — day of —, 1—, at (state place), in the county (or, city) of —, and organized ourselves as a board with appropriate officers.

That within thirty days after such organization, we determined upon the necessity of such steam railroad, and having

found the same to be necessary we fixed and determined the route thereof.

That we have prepared a certificate of incorporation of the corporation mentioned in section 125 of said act, in which are set forth and embodied, as component parts thereof, the several conditions, requirements and particulars by us determined pursuant to the provisions of said article 5 of chapter 565 of the Laws of New York of 1890, as amended, which certificate of incorporation is as follows, to-wit :

(Here insert certificate of incorporation, form No. 458.)

That within the time prescribed therefor by said act, we caused a suitable book of subscription to the capital stock of said corporation to be opened pursuant to due public notice, a copy of which notice, with proof of publication thereof, is hereto annexed, at the banking office of the (name bank), in said county (or city) of —.

That the whole (or, an amount proportioned to the part of such railway directed by us to be constructed) of the capital stock of said corporation having been subscribed by not less than fifteen persons, and the fixed percentage of such subscriptions having been paid, in cash, before the — day of —, in the year 1—, we did on that day by a written notice, a copy of which with proofs of service thereof upon the subscribers to said stock, personally or by mail, is hereto annexed, call a meeting of such subscribers for organization, and appoint the inspectors of election, viz. : (stating names of inspectors) ; that at such meeting (or, at a subsequent meeting to which such meeting was adjourned), a majority in number and amount of such subscribers elected persons, of the number of —,¹ which number had been theretofore determined by us, who should be directors for one year of the corporation formed for the purposes of constructing and operating such railway.

In witness whereof, we have hereunto set our hands at, etc., on this — day of —, in the year 1—. ²

(Signatures of commissioners.)

— COUNTY, ss.:

A. B., etc. (naming commissioners), being severally duly sworn, each for himself, deposes and says, that the foregoing certificate by him subscribed is true according to the best of his knowledge, information and belief.

(Signatures of affiants.)

Sworn to before me, this — }
day of —, 1—.

M. F.,

Justice of Supreme Court.

(Annex notices, etc., referred to in certificate.)

1. Not less than nine directors. tion shall be a corporation by the
 2. By section 128 of article 5 of name specified in such certificate, and be subject to the duties, liabilities and restrictions of such corporations.
- chapter 565 of Laws of New York of 1890, the commissioners within ten days after the election of the directors, are to deliver to them the above certificate in duplicate. The directors are to file their affidavits as to subscription for stock of the corporation (form No. 459), with the certificate in the office of the secretary of state, and a duplicate of the same in the office of the clerk of the county wherein such railway shall be located; and thereupon the persons who have subscribed such certificate of incorporation, and all persons who shall become stockholders in such corpora-
- No power exists in the commissioners after they have completed the certificate of incorporation and delivered the certificate in attempted compliance with the act, to reconvene and amend or reform the certificate of incorporation or their own certificate. The delivery of the certificate terminates their duties and ends their office. So held under chapter 606 of Laws of 1875. (Matter of N. Y. Cable R. Co., 109 N. Y. 32.)

No. 461.

Report of commissioners appointed to determine upon necessity of steam railway in streets, etc., of city or county.

(Laws of N. Y. of 1890, chap. 565, § 133, as amended by chap. 676 of Laws of N. Y. of 1892.)

To the Supreme Court of the State of New York :¹

We, the undersigned, commissioners appointed by an order of the said court, made at a Special Term thereof, held at the (city) of —, on the — day of —, 1—, pursuant to article 5 of chapter 565 of the Laws of New York

of 1890, passed June 7, 1890, and known as the railroad law, as amended by chapter 676 of Laws of New York of 1892, to determine the necessity of a steam railway in the streets, etc., of (the city of —, in) the county of —, and for other purposes as mentioned in said order, do hereby respectfully report pursuant to the provisions of section 133 of said article, as amended as aforesaid, as follows:

First. That (here report the statements contained in form No. 460, as to taking and filing of oath, executing and filing bond and organizing as a board, and having determined upon the necessity of the road).

Second. That we have within the time prescribed by said article for that purpose, ascertained and determined the amount of the pecuniary damage arising from the diminution of value of each parcel of property, hereinafter mentioned, bounded upon that portion of the street (or, streets), [highway (or, highways)], upon which it is proposed to construct such railway (or, railways) which will be caused by the construction, maintenance and operation thereof, which said parcels are described as follows, viz.:

1. That parcel of land, with the buildings thereon, situated, etc., bounded and described as follows, to-wit (insert description), the amount of the said pecuniary damage to which has been ascertained and determined by us at the sum of — dollars.

The name of the owner of said parcel of land is A. B., whose residence is at (state same), [or, that the name of the person (or, persons) appearing by the certificate of the clerk (or, register) of the county of — to have the title to said parcel of land is (or, are), etc. (naming him or them)].²

2. That parcel of land, etc. (as above describing same and stating in like manner damage thereto and as to ownership).

3. That, etc. (as above).

That for the purpose of ascertaining and determining the said pecuniary damage we have viewed the several parcels of real property bounded as above, and for the purpose of such appraisal we have given notice of the time and place, when and where we would meet to hear the owners, or persons interested in such real property, which notice was published for

(more than) ten days consecutively, in (two) newspapers in the county of —, in which county such railway is to be constructed, as will appear by the proofs of publication of said notice annexed to this report, and have taken such material testimony upon the probable diminution in value of such parcels as was offered by or in behalf of any person or party interested therein.

That the testimony taken by us as to the amount of said damage, accompanies this our report and is thereto annexed, marked "Schedule A."

That the aggregate pecuniary damage ascertained and determined by us to the above-mentioned property is the sum of — dollars.

[And we, having fixed and determined different periods of time within which the different sections of such railway hereinafter mentioned shall be constructed and ready for operation, we have ascertained and determined and hereby report separately, that the aggregate pecuniary damage to property bounded upon that portion of — street in said city, between, etc. (describing said section), is the sum of — dollars and — cents; that the aggregate pecuniary damage to property bounded, etc. (as above, and so on as to each section.)]¹

In witness whereof, we have hereunto set our hands, this — day of —, 1—. ²

(Signatures of commissioners.)

Commissioners.

(Annex testimony, notice of meeting of commissioners, and proof of publication.)

1. See the last clause of section 125 of article 5 of chapter 565 of Laws of New York of 1890, as amended by chapter 676 of the Laws of New York of 1892, as to these statements. chapter 676 of Laws of New York of 1892, as to this report and its contents. That act took effect May 1, 1891. See, also, cases referred to in note 3 to form No. 457.

2. See sections 125 and 133 of article 5 of chapter 565 of Laws of New York of 1890, as amended by As to motion to confirm this report see section 133, *supra*, and form No. 462, and notes thereto.

No. 462.

Notice of motion to confirm commissioners' report, form No. 461.

(Laws of N. Y. of 1890, chap. 565, § 133, as amended by chap. 676 of Laws of N. Y. of 1892.)

To the owners of property situated on the route of the railway of the (name of corporation) :

Notice is hereby given, pursuant to law, that the (name of corporation) will move at a Special Term of the Supreme Court, to be held at —, in the (city) of —, on the — day of —, 1 —, at the opening of the court on that day (or, at — o'clock in the — noon of that day), or as soon thereafter as counsel can be heard, for the confirmation of the report of the commissioners appointed at a Special Term of said court held at the (city) of —, on the — day of —, 1 —, to determine the necessity of a steam railway in the (city of —, in the) county of —, and for the other purposes set forth in said order: That said motion will be made upon said report, and upon this notice with proof of due service thereof pursuant to statute.¹

Dated —, 1 —.

F. C.,

Attorney for the (name of corporation.)
(Office address.)

1. This notice is required by section 133 of article 5 of chapter 565 of Laws of New York of 1890, as amended by chapter 676 of Laws of New York of 1892, to be given by the corporation within thirty days after the filing and recording of its certificate of incorporation. By section 125, id., the notice is required to be published for at least ten days consecutively, in at least two newspapers in the county where such railway is to be constructed. If the corporation fails so to move, any

property owner may make the motion; and thereafter the proceedings shall be conducted in the manner prescribed in the condemnation law. See forms Nos. 340, etc., under that law.

See, also, further provisions of said section 133, as amended, as to payment for property, and see section 134 of the same article as to compensation of commissioners; and section 135 of same article as to quorum. term of office, removal and vacancies in board of commissioners.

No. 463.**Application for authority to abandon or change part of route,
by railway corporation.**

(Laws of N. Y. of 1890, chap. 565, § 136, as amended by
chap. 676 of Laws of N. Y. of 1892.)

To the Supervisors of the county of — (or, to the Mayor
of the city of —):¹

The petition of the (name of corporation) respectfully shows, that said corporation was heretofore organized, under and pursuant to (article 5 of chapter 565 of the Laws of New York of 1890, passed June 7, 1890, known as the railroad law, as amended by chapter 676 of Laws of New York of 1892); that your petitioner has constructed (or, has put in operation) a railway upon a part, to-wit, upon (stating location of part constructed), and not upon the whole of the route fixed, determined and located for such railway by a board of commissioners appointed pursuant to said article, which route was as follows, viz.: (stating same.)

That your said petitioner desires to abandon that portion of its route upon which such railway has not heretofore been constructed (or, is not now in operation) described as follows, to-wit (describing same), [and desires to change (or, relocate) such portion of its route (and to extend (a part of) the portion of its route not so abandoned as follows: (describing same)].

That at a meeting of the board of directors of your petitioner held at, etc., on etc., at which all the members of said board were present [or, of which all the said directors were duly notified, and at which (a majority) of said directors, constituting a quorum of said board, were present], a resolution was duly passed, authorizing an application to be made for authority to make such abandonment, etc.

Wherefore, your petitioner hereby applies for authority, pursuant to the provisions of section 136 of said article 5 to make such abandonment, change, etc., and your petitioner will ever pray, etc.²

(Verification, as in form No. 323.)³

The (name of corporation)

By A. F., President.

(Indorsement of approval by supervisors or mayor and direction that it may be presented to the Supreme Court, in the manner provided in section 120 of chapter 565 of Laws of New York of 1890. See form No. 451.)

1. The petition is to be addressed to the board of supervisors of the county in which such portion of the route so desired to be changed or abandoned, shall be situated, which is not within the limits of any city, or if such route, or any part thereof, shall be within the limits of a city, to the mayor of the city, for the route or portion thereof within such city. (Laws of N. Y. of 1890, chap. 565, § 136, as amended by chap. 676 of Laws of N. Y. of 1862.)

2. See as to petition and its contents, section 136 of article 5 of chapter 565 of Laws of New York of 1890, which took effect May 1, 1891, as amended. The proceedings upon presentation of the petition are prescribed by the same section. See forms Nos. 453, 454, for forms of bond and oath of commissioners appointed upon this application.

3. The statute does not require the petition to be verified.

No. 464.

Report of commissioners appointed pursuant to application, form No. 463.

(Laws of N. Y. of 1890, chap. 565, § 136, as amended by chap. 676 of Laws N. Y. of 1892.)

To the Supreme Court of the State of New York :

The report of the undersigned commissioners appointed by an order of this Court, made at a Special Term thereof, held at the (city) of —, on the — day of —, 1—, pursuant to the provisions of section 136 of article 5 of chapter 565 of the Laws of New York of 1890, as amended by chapter 676 of Laws of New York of 1892, respectfully shows :

First. That within ten days after his appointment each commissioner so appointed took, subscribed and filed the oath and gave and filed the bond prescribed by section 121 of said article.¹

Second. That within fifteen days after such appointment had been so made, the said commissioners met at a convenient place, to-wit, at —, in the (city of —, in the) county of —,² and completed their organization as a board with appropriate officers.

Third. That before proceeding to hear the application of the (name of corporation), the said board gave notice of the time and place of a hearing before us, by (stating manner of notice), such notice being deemed by us the most proper and effective one which could be given.

That within thirty days after completing the organization of such board, we heard the application of said corporation, and all parties who were interested therein, and within sixty days after such organization we determined whether any part of the route of the railway of said corporation should be authorized to be abandoned, or should be changed (and re-located) with or without any extension (or, extensions) thereof.

That having determined that an abandonment of that portion (or, those portions) of the route of such railway described as follows, to-wit (describing same), should be allowed [or, that a change (and extension) of that portion (or, those portions) of, etc. (as above), should be made], we do hereby authorize and require the said portion of said route to be abandoned, etc. (stating abandonment), [and do hereby authorize and require the said portion of said route to be re-located as follows: (stating re-location)] (and so on, stating change, etc., authorized and directed), which said abandonment, etc., is authorized and required upon the following conditions, viz.: (stating such conditions as to the board shall seem proper).

That we have caused to be made in duplicate a survey and map of the route of the said railway as so changed and fixed, determined and located, showing the line and location of each and all of the routes thereof [with the extension (or, extensions)] as so fixed, determined and located [and, showing also the part (or, parts) of the route (or, routes) as heretofore fixed, determined and located, but by us allowed to be abandoned], which said map and survey are hereto annexed, marked Schedule A.

And we further report that we have extended the time for the construction and completion of the said railway for (stating time of extension),³ and do hereby prescribe, pursuant to the provisions of said article, as amended, that a

failure by the corporation, its successors or assigns, to complete the said railway within the time above limited, shall work a forfeiture to the supervisors of the county of — (or, to the city of —), of the rights and franchises of said corporation, with respect to that portion of the route fixed, determined and located anew as above provided (and with respect to the now authorized extension (or, extensions) of said route), upon which said railway shall not be constructed within the time so limited.

All of which is respectfully submitted.⁴

(Signatures of commissioners.)

Commissioners.

(Annex survey and map referred to in report.)

1. Section 136 of article 5 of chapter 565 of Laws of New York of 1890, as amended by chapter 676 of Laws of New York of 1892, requires the same oath to be taken, subscribed and filed, and the same bond to be given and filed by the commissioners, within ten days, as are prescribed by section 121 of said article in the case of the original commissioners; and provides that if any one so appointed shall not comply with this requirement, he shall be deemed to have declined to accept such appointment, and to have made a vacancy which the appointing power shall fill by another appointment as therein provided.

2. Said section 136 provides that within fifteen days after their appointment, the commissioners shall meet at some convenient place in the county and complete their organization as a board with appropriate officers.

3. Such extension of time shall not be for a longer period than that originally allowed by law for the completion thereof. (Id., § 136.)

4. See generally as to this report and its contents, section 136 of chapter 565 of Laws of New York of 1890, which act went into effect May 1, 1891, and was amended by chapter 676 of Laws of New York of 1892. The report is directed by that section to be signed in duplicate by at least a majority of the then members of the board, and within ten days after so signing such report the board shall cause the same to be filed in the office of the secretary of State, and the duplicate thereof in the office of the clerk of the county wherein the railway shall be located.

For the proceedings under that section to obtain an order of the Supreme Court for the construction, etc., of such railway in case the consent of the property owners thereto cannot be obtained, see Lansing's Forms of Civil Procedure, vol. 3, forms Nos. 493, etc.

See, also, forms Nos. 455, 461, *ante*, for proceedings for appraisal of property by commissioners under said section 136.

TITLE V.

FORMS UNDER THE STOCK CORPORATION LAW OF NEW YORK STATE.

(Laws of N. Y. of 1890, chap. 564, as amended by chap. 688 of Laws of N. Y. of 1892.)

- No. 465. Consent of stockholders to mortgage property and franchises of stock corporation.
466. Certificate upon reorganization of domestic stock corporation, upon sale under judgment, etc., of its property and franchises.
467. Notice to stockholders of stock corporation of meeting to increase or reduce the number of directors.
468. Proof of service of notice, form No. 467.
469. Transcript of proceedings of such meeting.
470. Oath of inspectors of election of stock corporation.
471. Stock book of stock corporation.
472. Annual report of stock corporation, other than monied and railroad corporations.
473. Affidavit of directors of such corporation to avoid personal liability for failure to make and file report, form No. 472.
474. Amended certificate of stock corporation altering or extending its business and powers.
475. Copy proceedings of meeting to be filed with such amended certificate.
476. Notice of meeting of stockholders to increase or reduce capital stock.
477. Certificate of such increase or reduction.
478. Approval by comptroller, etc., to be indorsed upon certificate, form No. 477, in certain cases.
479. Application to court to order issue of new certificate in place of lost certificate of stock.
480. Order of court to show cause upon such application.
481. Order of court upon return of order to show cause, form No. 480.
482. Bond of indemnity to be filed pursuant to order form No. 481, requiring the issuing of new stock certificates.
483. Request to treasurer, etc., of stock corporation, for a statement of its affairs.
484. Petition for extension of time to make and deliver such statement.
485. Order of court or judge upon petition, form No. 484.
486. Notice by laborer, servant or employe of stock corporation to stockholder of intention to hold him liable for debt owing to such laborer, etc.

No. 465.**Consent of stockholders to mortgage property and franchises of stock corporation.**

(Laws of N. Y. of 1890, chap. 564, § 2, as amended by chap. 688, § 2, of Laws of 1892.)

We, the undersigned, stockholders owning (more than) two-thirds of the stock of the (name of corporation), do hereby consent, pursuant to the provisions of section 2 of chapter 564 of the Laws of New York of 1890, known as the stock corporation law, as amended by section 2 of chapter 688 of the Laws of New York of 1892, to the execution of a mortgage upon the real (and personal) estate of said corporation [described as follows: (describe same)], and upon the franchises thereof to A. M. (and M. N., as trustees for the holders of bonds to be executed by said corporation), to secure the payment of an indebtedness of said corporation to said M. N. (or, to said bondholders), heretofore contracted (or, about to be contracted) by said corporation, for the transaction of its business for which it was incorporated (or, for the exercise of its corporate rights, privileges or franchises; or, state other lawful purpose of its incorporation), amounting to the sum of — dollars, and interest thereupon from the — day of —, 1—. ¹

In witness, etc., as in form No. 365.

(Signatures.)

In presence of

A. B.

(Acknowledgment, etc., as in form No. 89.)

1. See section 2 of chapter 564 of Laws of New York of 1890, as amended by chaps. 337 and 688 of Laws of New York of 1892, as to this consent, without which no mortgages, except purchase-money mortgages, are to be issued by a stock corporation. Such consent must be filed and recorded in the office of the clerk or register of the county where

the corporation has its principal place of business.

Such consent may also be given by vote at a special meeting of the stockholders called for that purpose; and a certificate of the vote at such meeting, signed and sworn to by the chairman and secretary thereof, shall be filed and recorded as aforesaid. (See same section)

No. 466.

Certificate upon reorganization of domestic stock corporation, upon sale of corporate property and franchises under judgment, etc.

(Laws of N. Y. of 1890, chap. 564, § 3, as amended or re-enacted by § 3 of chap. 688 of Laws of N. Y. of 1892.)

We, the undersigned, a majority of whom are citizens and residents of the State of New York, in order to become a corporation pursuant to the provisions of section 3 of chapter 564 of Laws of New York of 1890, known as the stock corporation law, as amended or re-enacted by section 3 of chapter 688 of the Laws of that State of 1892, and to take and possess the property and franchises of the (name of corporation), a domestic stock corporation of the said State of New York, organized under and pursuant to chapter — of the Laws of that State, entitled "An act, etc." (giving title), which property and franchises were sold, pursuant to the judgment or decree of the Supreme Court of that State, rendered in an action in said court, between —, plaintiffs, and —, defendants, dated on the — day of —, 1—, authorizing (or, directing) the sale of said property and franchises, which property is described as follows, to-wit: (describe same briefly), and which property and franchises were acquired by us under such sale, do hereby make and acknowledge the following certificate, as required by section 3 above mentioned, hereby stating and certifying as follows:

First. That the name of the new corporation intended to be formed by the making and filing of this certificate is (stating same).¹

Second. That the maximum amount of the capital stock of said new corporation is — dollars, and the number of shares into which said stock is to be divided is — shares of — dollars each, viz.: — shares of common stock and — shares of preferred stock, and that the rights pertaining to said common stock are (stating same), and that the rights pertaining to said preferred stock are (stating same).

Third. That there shall be — directors of said new corporation,² who shall manage the affairs thereof, and the names and post-office addresses of the directors of said new corporation for the first year are as follows: F. R., whose post-office address is at — ; C. P., whose post-office address is at —, etc. (stating name and address of each).

Fourth. That the following plan (or, agreement) was entered into at (or, previous to) the time of the said sale, in anticipation of the formation of said new corporation, pursuant to which such purchase was made, viz.: (Here set forth such agreement, if any was made.)

In witness whereof, etc. (as in form No. 181).³

(Signatures of corporators.)

(Acknowledgment, as in form No. 89.)

1. See note 2 to form No. 402, as to name of corporation.

2. Not less nor more than were required by law for the old corporation. (Laws of N. Y. of 1890, chap. 564, § 3, as amended or re-enacted by Laws of N. Y. of 1892, chap. 688, § 3.)

3. See section 3 referred to in note 2, above; as to this certificate and its contents. Such certificate is to be filed in the offices where certificates of incorporation are required by law to be filed (see note 5 to form No. 487), and thereupon such new corporation shall be vested with and

entitled to exercise and enjoy all the rights, privileges and franchises which at the time of such sale belonged to, or were vested in the corporation last owning the property sold, or its receiver, and shall be subject to all the provisions, duties and liabilities imposed by law on such corporations. (See same section.)

As to contents of plan or agreement referred to in the fourth subdivision of above certificate, see section 4 of same chapter, as re-enacted by chapter 688 of Laws of New York of 1892.

No. 467.

Notice to stockholders of stock corporation of meeting to increase or reduce the number of directors.

(Laws of N. Y. of 1890, chap. 564, § 21, as amended by chap. 688 of Laws of N. Y. of 1892, § 21.)

To the stockholders of the (name of corporation):

Take notice that a meeting of the stockholders of said corporation will be held at (naming usual place of meeting of directors) on the — day of —, 1 —, at — o'clock in the — noon, for the purpose of determining whether an

increase (or, reduction) of the number of the directors thereof to (stating number) should be made (and for the transaction of such other business as may properly come before such meeting).¹

Dated —, 1—.

By order of the board of directors.

F. G.,

Secretary.

1. See as to this notice, section 21 to be served personally or by mail, of chapter 564 of Laws of N. Y. of directed to each stockholder at his 1890, as amended by section 21 of last known post-office address, two chapter 688 of Laws of New York of weeks previous to the meeting. 1892. Such notice is by that section

No. 468.

Proof of service of notice, form No. 467.

(Laws of N. Y. of 1890, chap. 564, § 21, as amended by chap. 688 of Laws of N. Y. of 1892, § 21.)

As in form No. 370, to (*) and from thence as follows: At the post-office at the (city) of —, inclosed in a sealed wrapper and directed to each stockholder respectively at his last known post office address, and paying the postage on each copy so deposited. That the persons so served are all the stockholders of said corporation.¹

(Jurat, as in form No. 32.)

'A. M.

1. See section 21 of chapter 564 of proof is required by that section to Laws of New York of 1890, as be filed in the office of the corpora- amended by section 21 of chapter 688 tion at or before the time of the of Laws of New York of 1892, as to meeting. this service and proof thereof. Such

No. 469.

Transcript of proceedings of meeting of stockholders of stock corporation, to increase, etc., number of directors.

(Laws of N. Y. of 1890, chap. 564, § 21, as amended by § 21 of chap. 688 of Laws of N. Y. of 1892.)

A meeting of the stockholders of the (name of corpora- tion), called for the purpose of determining whether the number of the directors of said corporation shall be increased (or, reduced) to (stating number) was held on the — day

of —, 1—, at the usual place of meeting of the directors of said corporation, to-wit, at, etc., of which meeting all of the stockholders thereof, of record, had due notice. Proof of the service of such notice was filed, pursuant to law, in the office of said corporation, at (or, before) the time of such meeting.

A resolution was offered by M. N., one of the stockholders present, as follows:

Resolved, That the number of directors of the (name of corporation), be increased (or, reduced to (stating number), pursuant to the provisions of section 21 of chapter 564 of the Laws of New York of 1890, known as the stock corporation law, as amended by section 21 of chapter 688 of the Laws of New York of 1892.

A vote on such resolution was taken (by ballot), and thereupon stockholders of said corporation owning (more than) a majority of the stock thereof, voted, in person or by proxy, in favor of the adoption thereof.

Said meeting thereupon adjourned.

We, the undersigned, the president and secretary of the meeting hereinafter mentioned of the stockholders of the (name of corporation), do hereby certify that the foregoing (or, annexed) record is a transcript of the record of the proceedings of a meeting of the stockholders of said corporation entered in the minutes thereof, held at the time and place and for the purpose therein specified, and of the time and place of which meeting two weeks' notice in writing was given, as required by law, to each stockholder of said corporation of record.

Witness our hands this — day of —, 1—, at the (city) of —.

A. M., President.

C. R., Secretary.

(Add affidavit of president and secretary, verifying certificate, and in case of banking, etc., corporation add consent of superintendent of banks, and in case of insurance corporation add consent of superintendent of insurance.)

1. See section 21 of chapter 564 of Laws of 1890, as amended by section 21 of chapter 688 of Laws of New York of 1892, as to this transcript, which is directed by said section to be filed in the offices where the original certificates of incorporation were filed. See note 2 to form No. 402, as to such filing.

By section 20 of chapter 688 of

Laws of New York of 1892, at every election of directors and meeting of the members of any stock corporation, every member who is not in default in the payment of his subscriptions upon his stock or disqualified by the by-laws, shall be entitled to one vote for every share of stock held by him for ten days immediately preceding the election or meeting.

No. 470.**Oath of inspectors of election of stock corporation.**

(Laws of N. Y. of 1890, chap. 564, § 28, as amended by chap. 688 of Laws of N. Y. of 1892, § 28.)

— COUNTY, ss.:

We, the undersigned, appointed to act as inspectors of election at a meeting of the stockholders (or, election of directors) of the (name of corporation), held at the (city) of —, on the — day of —, 1—, do solemnly swear that we will faithfully execute our duties as such inspectors, at such meeting, with strict impartiality, and according to the best of our ability.¹

(Signatures of inspectors.)

(Jurat, as in form No. 32.)

1. See section 28 of chapter 564 of Laws of New York of 1890, as amended by section 28 of chapter 688 of Laws of New York of 1892, as to this oath, which is to be immediately filed in the office of the clerk of the county in which such election or meeting shall be held.

No. 471.**Stock-book of stock corporation.**

(Laws of N. Y. of 1890, chap. 564, § 29, as amended by chap. 688 of Laws of N. Y. of 1892, § 29.)

Stock-book of the (name of corporation), kept pursuant to section 29 of the stock corporation law of the State of New York, as amended:¹

| Names of stockholders. | Places of residence. | Number of shares of stock held by them respectively. | Time when they respectively became the owners thereof. | Amount paid thereon. |
|------------------------|----------------------|--|--|----------------------|
| | | | | |
| | | | | |

1. See section 29 of chapter 564 of Laws of New York of 1890, as amended by section 29 of chapter 688 of Laws of New York of 1892, as to this book, which is required by that section to be kept open daily during business hours, for the inspection of the stockholders

and judgment creditors, who may make extracts therefrom.

See *People ex rel. Clason v. Nassau Ferry Co.* (86 Hun, 128), as to right to inspect corporate stock book by stockholder.

No. 472.**Annual report of stock corporation, other than monied and railroad corporations.**

(Laws of N. Y. of 1890, chap. 564, § 30, as amended by chap. 688 of Laws of N. Y. of 1892, § 30.)

The (name of corporation) hereby, pursuant to the provisions of section 30 of the stock corporation law, as amended, makes its annual report, as of January 1st, 1——, as follows :

1. That the amount of its capital stock is the sum of —— dollars, and that one —— thereof, to-wit: the sum of —— dollars has been actually issued.

2. That the amount of the debts of said corporation is —— dollars (or, does not now exceed the sum of —— dollars.)

3. That the amount of the assets of said corporation is —— dollars (or, is at least equal to —— dollars.)

In witness, etc. (as in form No. 365).¹

(Signatures of majority of directors.)

Majority of directors.

—— COUNTY, ss.:

A. B. and C. D., being severally duly sworn, say, and each for himself says, that said A. B. is the president and said C. D. is the secretary of the (name of corporation), above mentioned, and that the foregoing report is true.

A. B.

(Jurat, as in form No. 32.)

C. D.

1. See section 30 of chapter 564 of Laws of New York of 1890, as amended by section 30 of chapter 688 of the Laws of New York of 1892, as to this report, which is to be filed in the office of the secretary of State and in the office of the county clerk of the

county where the principal business office of the corporation may be located.

See, also, chapter 384 of Laws of 1897, amending said section 30, and see *Wilson Manufacturing Co. v. Schwind* (5 Misc. 205), *Providence Steam, etc., Co. v. Connell* (86 Hun, 319).

No. 473.**Affidavit of director of such corporation to avoid personal liability for failure to make and file report, form No. 472.**

(Laws of N. Y. of 1890, chap. 564, § 30, as amended by chap. 688 of Laws of N. Y. of 1892, § 30.)

I, E. F., do hereby certify, pursuant to the provisions of section 30 of the stock corporation law, as amended, that I

am one of the directors of the (name of corporation), and that I have endeavored to have the annual report of said corporation required by said section made and filed, but that the officers (or, a majority of the directors of said corporation) have refused and neglected to make and file the same; and I further certify and report, pursuant to said section, that the items required to be stated in such annual report, so far as they are within my knowledge, or are obtainable from sources of information open to me, are as follows:

1. State as in No. 1, form No. 472.
2. State as in No. 2, form No. 472.
3. State as in No. 3, form No. 472.

In witness whereof, I have hereunto set my hand at, etc.,
this — day of —, 1—.¹

E. F.

— COUNTY, ss.:

E. F., of —, being duly sworn, says, that the foregoing report appended to the foregoing certificate signed by him is true, to the best of his knowledge, information and belief.

(Jurat, as in form No. 32.)

1. See section 30 of chapter 564 of 688 of Laws of New York of 1892, as Laws of New York of 1890, as to this certificate and report, and its amended by section 30 of chapter effect.

No. 474.

Amended certificate of stock corporation altering or extending its business and powers.

(Laws of N. Y. of 1890, chap. 564, as amended by chap. 688 of Laws of N. Y. of 1892, § 32.)

Substantially the same as form No. 411, making necessary changes.¹

1. See note 1 to form No. 475.

. No. 475.

Copy proceedings of meeting of stockholders to be filed with amended certificate, form No. 474.

(Laws of N. Y. of 1890, chap. 564, as amended by chap. 688 of Laws of N. Y. of 1892, § 32.)

A meeting of the stockholders of the (name of corporation), called in the manner provided in section 45 of chapter 564 of Laws of New York of 1890, as amended by chapter 688 of Laws of New York of 1892, for the purpose of determining as to the extension (or, alteration) of its business so as to include (stating business powers and rights, etc., desired), was held at, etc., on, etc., of which meeting all the stockholders and members of said corporation had due notice.

A resolution was offered by M. N., one of the stockholders present, as follows: (insert resolution).

A vote on such resolution was taken (by ballot), and thereupon stockholders of said corporation representing (more than) three-fifths of the capital of said corporation, voted, in person or by proxy, in favor of the adoption thereof.

Said meeting then adjourned.¹

— COUNTY, ss.:

E. C., of —, being duly sworn, says, that he is one of the directors of the (name of corporation) mentioned in the foregoing (or, annexed) copy of the proceedings of a meeting of the stockholders thereof, held at the time and place therein stated; that he was present at said meeting and that the said copy is a true copy of the proceedings thereof.

E. C.

(Jurat, as in form No. 32.)

1. See section 32 of chapter 688 of Laws of New York of 1892, amending chapter 564 of Laws of New York of 1890, as to this copy and its verification by one of the directors present at the meeting, which is to be annexed to form No. 474 and filed therewith in the manner provided for the original certificate of incorporation.

No. 476.**Notice of meeting of stockholders of stock corporation, to increase or reduce capital stock.**

(Laws of N. Y. of 1890, chap. 564, § 45, as amended by Laws of N. Y. of 1892, chap. 688, § 45.)

As in form No. 405, to (*) and from thence as follows: Increasing (or, reducing) the capital stock of said corporation to the sum of — dollars, pursuant, etc. (substantially as in form No. 405) (and for the transaction of such other business as may properly come before said meeting).¹

Dated — 1 —.

(Signatures of majority of directors.)

A majority of the directors of said corporation.

1. See section 45 of chapter 564 of Laws of New York of 1890, as amended by section 45 of chapter 688 of Laws of New York of 1892, as to this notice and publication and service thereof. See, also, amendment to said section by chapter 700 of Laws of New York of 1893.

No. 477.**Certificate of increase or reduction of capital stock of stock corporation.**

(Laws of N. Y. of 1890, chap. 564, § 46, as amended by chap. 688 of Laws of N. Y. of 1892, § 46.)

We, the undersigned, do hereby certify pursuant to section 46 of the stock corporation law of the State of New York, as amended, as follows: That a meeting of the stockholders of the (name of corporation), specially called for the purpose of voting upon the question of the increase (or, reduction) of the capital stock of said corporation to the sum of — dollars, was held at — in the (city) of —, on the — day of —, 1 —, of which meeting due notice had been given, pursuant to said section, a copy of which notice with due proof of publication and service thereof is hereto annexed, marked "A." That at the time and place of said meeting specified in said notice, stockholders of said corporation appeared in person and by proxy, in numbers

representing (more than) two-thirds of all the shares of the stock of said corporation, and organized by choosing from their number said A. B. as chairman, and C. D. as secretary; that a vote was taken of those present as aforesaid in person and by proxy, upon the question of an increase (or, reduction) of the capital stock of said corporation, and that the votes of stockholders thereof owning (more than) two-thirds of said stock, were given in favor of the increase (or, reduction) of said capital stock to the amount of — thousand dollars.

And we do further certify, pursuant to said section 46 of the stock corporation law as amended, as follows:

First. That the amount of the capital stock of said corporation actually paid in is the sum of — dollars.

Second. That the whole amount of the debts and liabilities of said corporation is the sum of — dollars.

Third. That the amount of the increased (or, reduced) capital stock of said corporation is the sum of — dollars.

In witness, etc. (as in form No. 423).¹

A. B., Chairman.

C. D., Secretary.

(Acknowledgment, as in form No. 89.)

— COUNTY, ss.:

A. B., of —, and C. D., of —, being severally duly sworn, say, and each for himself says: That the statements contained in the foregoing certificate by them subscribed are true.

A. B.

C. D.

(Jurat, as in form No. 32.)

(Annex notice with proof of publication and service.)

1. See section 46 of chapter 688 of Laws of New York of 1892, amending same section of chapter 564 of Laws of New York of 1890, as to this certificate, which is to be filed in the office of the clerk of the county where the principal place of business

of the corporation shall be located, and a duplicate thereof in the office of the secretary of State. For form of approval by comptroller, etc., to be endorsed upon certificate, see next form, No. 478. See, also, amendment to said section 46 by chapter 700 of Laws of New York of 1893.

No. 478.

Approval by comptroller, etc., to be indorsed upon certificate, form No. 477, in certain cases.

(Laws of N. Y. of 1890, chap. 564, § 46, as amended by chap. 688 of Laws of N. Y. of 1892, § 46.)

(I), E. W. (comptroller), of the State of New York, do hereby approve of the foregoing (or, annexed) certificate, pursuant to section 46 of the stock corporation law, and state, pursuant to said section, that the reduced capital of the (name of corporation) is sufficient for the proper purposes of said corporation, and is in excess of its debts and liabilities.¹

Dated —, 1 —

E. W.,

Comptroller (or, other signature.)

1. See section 46 of chapter 564 of Laws of New York of 1890, as amended by same section of chapter 688 of Laws of New York of 1892, as to this approval, which is to be made by the comptroller in case of a reduction of the capital stock, except of a railroad corporation, or a monied corporation, and in case of the increase or reduction of the capital stock of a railroad corporation, or a monied corporation, by the board of railroad commissioners, if a railroad corporation ;

by the superintendent of banks, if a corporation formed under or subject to the banking law ; and by the superintendent of insurance, if an insurance corporation.

An affidavit is required by the comptroller as to facts stated in the above certificate, before making same.

See section 56 added to stock corporation law by chapter 196 of Laws of 1893, as to increase, etc., of number of shares into which capital stock is divided by same proceeding as above.

No. 479.

Application to the court for issue of new stock certificate in place of lost certificate of stock.

(Laws of N. Y. of 1890, chap. 564, § 50, as amended by Laws of N. Y. of 1892, chap. 688, § 50.)

See forms Nos. 241-244 of Lansing's Forms of Civil Procedure, vol. 3, for this form, and forms Nos. 480, 481, 482, which are substantially the same as under this statute.

No. 480.

Order of court to show cause upon such application.

(Same statute as referred to under form No. 479.)

See last form, No. 479.

No. 481.

Order of court upon return of order to show cause, form No. 479.

(Same statute as referred to under form No. 479.)

See form No. 479.

No. 482.

Bond of indemnity to be filed pursuant to order, form No. 481, requiring the issuing of new stock certificate.

(Same statute as referred to under form No. 479.)

See form No. 479.

No. 483.

Request to treasurer, etc., of stock corporations, for a statement of its affairs.

(Laws of N. Y. of 1890, chap. 564, § 52, as amended by chap. 688 of Laws of N. Y. of 1892, § 52.)

To the (Treasurer) of the (name of corporation):

We, the undersigned, stockholders of the said corporation, owning (more than) five (or, three) per centum of the capital stock of said corporation, do hereby pursuant to section 52 of the stock corporation law as amended, request from you a statement of the affairs of said corporation, under oath, embracing a particular account of all its assets and liabilities.¹

Dated —, 1—.

Yours, etc.,

(Signatures of stockholders.)

1. See section 52 of chapter 564 of Laws of New York of 1890, as amended by same section of chapter 688 of Laws of New York of 1892, as to this request and statement to be rendered thereupon within thirty days thereafter. Also, as to extension of

time for the making and delivery of such certificate, see same section and form No. 484; and see same section as to penalty for refusal or neglect to comply with the provisions thereof.

See *People ex rel. Clason v. Nassau Ferry Co.* (86 Hun, 128).

No. 484.

Application for extension of time to make and deliver statement, pursuant to request, form No. 483.

(Laws of N. Y. of 1890, chap. 564, § 52, as amended by Laws of N. Y. of 1892, chap. 688, § 52.)

To the Supreme Court (or, To Hon. A. O., Justice of the Supreme Court):

The petition of M. N. respectfully shows, that he is the treasurer (or, name other fiscal officer) of the (name of corporation), a stock corporation, other than a monied corporation, duly incorporated under the laws of the State of New York, having a capital stock of — dollars, located and doing business at the (city) of —. That on the — day of —, 1—, a written request was made to your petitioner, as such (treasurer) by stockholders of said corporation owning (more than) five (or, three) per centum of the said capital stock, pursuant to section 52 of the stock corporation law, as amended, for a statement of its affairs, under oath, embracing a particular account of all its assets and liabilities. That your petitioner will not be able to make and deliver such statement within thirty days of the time at which said request was made, as aforesaid, for the reason that (stating same). That he will require at least — days time additional to the time prescribed by said section for the purpose of making and delivering the same.

Your petitioner, therefore, prays that — days additional time may be granted to him by the court (or, by your honor) for the purpose aforesaid.¹

Dated —, 1—.

M. N.

(Verification, as in form No. 323.)

1. See section 52 of chapter 564 of New York of 1892, as to this application. Laws of New York of 1890, as amended by chapter 688 of Laws of

No. 485.**Order of court or judge upon petition, from No. 484.**

(Laws of N. Y. of 1890, chap. 564, § 52, as amended by Laws of N. Y. of 1892, chap. 688, § 52.)

At, etc., as in form No. 329 (when made by court).

In the matter of the applica-
tion of M. N., treasurer of
the —, for extension of
time to make and deliver
statement of the affairs of
said corporation.

It is hereby ordered (or, I do hereby order), upon the petition of M. N., the treasurer (or, name other fiscal officer) of the (name of corporation), dated —, 1 —, showing good cause therefor, and upon the application of C. F., counsel for said M. N., that the time of said M. N. to make and deliver a statement of the affairs of said corporation as required by section 52 of the stock corporation law, as amended, be and the same is hereby extended for — days from the expiration of the time allowed by said section.¹

(Dated —, 1 —.)

A. O.,

Justice of Supreme Court.
(when made by judge.)

1. See section 52 of chapter 564 of 688 of Laws of New York of 1892, Laws of New York of 1890, as as to this order, and see note 1 to amended by section 52 of chapter last form, No. 484.

No. 486.

Notice by laborer, servant or employe of stock corporation to stockholder of intention to hold him liable for debt owing to such laborer, etc.

(Laws of N. Y. of 1890, chap. 564, § 57, as amended by Laws of N. Y. of 1892, chap. 688, § 54.)

To A. B., stockholder of the (name of corporation):

You will please take notice that the said corporation is indebted to me, the undersigned, in the sum of — dollars, for services performed by him for said corporation, which said

services terminated on the — day of —, 1—, and that I intend to hold you liable as such stockholder for the amount of such indebtedness (with interest thereupon from —, 1—).¹

Yours, etc.,

Dated —, 1—.

I. F.

1. See section 57 of chapter 564 of Laws of New York of 1890, as amended by section 54 of chapter 688 of Laws of New York of 1892, as to this notice, and its effect. See, also, section 59 added to stock corporation law by chapter 929 of Laws of New York of 1896 as to change of place of business of stock corporation.

TITLE VI.

FORMS RELATING TO TRANSPORTATION CORPORATIONS.

(Laws of N. Y. of 1890, chap. 566.)

ARTICLE I.

FORMS RELATING TO FERRY CORPORATIONS.

(Laws of N. Y. of 1890, chap. 566, art. 1.)

No. 487. Certificate of incorporation of ferry corporation.

488. Affidavit of majority of directors of a ferry corporation, that one-half of its capital has been actually paid in.

No. 487.

Certificate of incorporation of ferry corporation.

(Laws of N. Y. of 1890, chap. 566, § 2.)

We, the undersigned,¹ for the purpose of incorporating ourselves for conducting and managing a ferry, do hereby certify, as follows, pursuant to an act of the legislature of the State of New York, passed June 7, 1890, known as the transportation corporations law, to-wit :

First. That the name of said corporation shall be the (insert name of corporation).²

Second. That the places from and to which the ferry established (or, to be established) by said corporation shall run are (to be) from (stating place) in the (town) of —, in the county of —, to (stating place), in the (town) of —, in the county of —.

Third. That the term for which the said corporation shall exist shall be (fifty)³ years.

Fourth. That the amount of the stock of said corporation shall be — dollars, and the number of shares thereof shall be, — shares, of — dollars each.

Fifth. That the number of the directors of said corporation shall be —,⁴ and the names of the directors for the first year shall be as follows: A. B., C. D., E. F., etc.

In witness whereof, we have hereunto set our hands, this — day of —, 1—.⁵

F. G.

G. H., etc.

(Certificate of acknowledgment by corporators, as in forms Nos. 89, etc.)

1. Three or more persons. By section 4 of chapter 687 of Laws of New York of 1892, amending the general corporation law, a certificate of incorporation, except in the case of a corporation formed by the reincorporation or consolidation of existing corporations, or of a reorganization of a corporation upon the sale of the property or franchises of a previously existing corporation, or otherwise, must be executed by natural persons, who must be of full age and at least two-thirds of them must be citizens of the United States, and a majority of them residents of that State.

2. See note 2 to form No. 402, as to name of corporation.

3. Not to exceed fifty years.

4. Not less than three nor more than fifteen.

5. See provisions of section 2 of chapter 566 of Laws of New York of 1890, p. 1137, as to this certificate and its contents. By section 163 of that chapter it is to take effect on May 1, 1891.

The certificate of incorporation of this corporation as of every corporation formed under the laws of the State of New York, except of a religious, cemetery, monied, municipal or fire department corporation, is to

be filed in the office of the secretary of State, and also a certified copy of such certificate, or amended or supplemental certificate, with the certificate of the secretary of State of its filing and record, or a duplicate original thereof is to be filed in the office of the clerk of the county, where the office of the corporation is to be located, and recorded in both offices in books, properly indexed, and especially provided therefor. If the corporation be a non-stock corporation, and such county be not determined upon at the time of executing the certificate, the filing must be in such county clerk's office as the judge approving the certificate shall direct. (Laws of N. Y. of 1890, chap. 563, § 3, p. 1061, as amended by section 5 of chapter 687 of Laws of N. Y. of 1892) As to amended or supplemental certificate, see section 5, id., as amended by same act, section 7. As to replacing lost or destroyed certificate, see id., § 6, as amended or re-enacted by same act, section 8. By section 7, id., as amended or re-enacted by same act, section 9, the certificates of incorporation of any corporation duly filed are made presumptive evidence of its incorporation, and any amended certificate or other paper

duly filed relating to the incorporation of any corporation, or its existence or management, and containing facts required by law to be stated therein, are made presumptive evidence of the existence of such facts. See *People ex rel. Clason v. Nassau Ferry Co.* (86 Hun, 128) as to right of stockholder to inspect corporate stock book and account books of ferry company.

No. 488.

Affidavit of majority of directors of a ferry corporation, that one-half of its capital has been actually paid in.

(Laws of N. Y. of 1890, chap. 566, § 3.)

COUNTY OF —, ss.:

A. B., of —, C. D., of —, and E. F., of —, being severally duly sworn, say, and each for himself says: That they are a majority of the directors of the (insert name of company), and that (more than) one-half the capital of said corporation named in its certificate of incorporation has been actually paid in.¹

A. B.

C. D.

E. F.

(Jurat, as in form No. 32.)

1. This affidavit is required by section 3 of chapter 566 of the Laws of New York of 1890 to be filed in each of the offices in which the certificate of incorporation is required to be filed, before any ferry corporation shall be authorized to commence business.

By section 5, id., the capital stock of every such corporation shall all be paid in, one-half thereof within one year and the other half thereof within two years of its incorporation, or such corporation shall be dissolved.

ARTICLE 2.

FORMS RELATING TO NAVIGATION CORPORATIONS.

(Laws of N. Y. of 1890, chap. 566, art. 2.)

No. 489. Certificate of incorporation of navigation corporations.

490. Affidavit of directors of navigation corporation, to be attached to certificate, form No. 489.

491. Certificate that capital stock of navigation corporation has been paid in.

No. 489.

Certificate of incorporation of navigation corporation.

(Laws of N. Y. of 1890, chap. 566, § 10.)

We, the undersigned,¹ in order to form a corporation for the purposes and objects hereinafter stated, do hereby make,

sign and acknowledge the following certificate and statement, pursuant to the provisions of section 10 of article 2 of an act of the legislature of the State of New York, passed June 7, 1890, known as the transportation corporations law :

First. That the name of said corporation hereby formed shall be the (insert name of corporation.)²

Second. That the specific objects for which said corporation is formed are as follows, viz.: (Stating same as authorized by said section 10, designating the waters to be navigated, and in case of ocean steamers, the ports between which the vessels are intended to be navigated).

Third. That the amount of the capital stock of said corporation shall be — dollars,³ which said stock shall consist of — shares of — dollars each.

Fourth. That the term of the existence of said corporation shall be (fifty) years.⁴

Fifth. That the number of directors of said corporation shall be (five)⁵ and that the names of such directors for the first year shall be as follows, viz.: A. B., C. D., etc.

Sixth. That the principal office of said corporation is to be situated in the city (or, town) of —, in the county of —.

Seventh. That each subscriber to this certificate hereby agrees to take — shares of the stock of said corporation (or, that the said A. B. hereby agrees to take — shares of the capital stock of said corporation ; that said C. D. hereby agrees to take — shares of said capital stock ; that said E. F. hereby agrees to take — shares of said capital stock, and that said G. H. hereby agrees, etc., stating the shares agreed to be taken by each subscriber of the certificate).⁶

In witness whereof, we have hereunto set our hands, this — day of —, 1 —.⁷

(Signatures of corporators.)

(Certificates of acknowledgment by corporators, substantially as in form No. 89.)

(Annex affidavit, form No. 490.)

1. Seven or more persons; and see note 1 to form No. 487 as to the qualifications of such persons.

2. See note 2 to form No. 402.

3. Not less than twenty thousand, nor more than four million dollars ;

at least one-half of which is required by section 12 of same chapter to be paid in within one year, and the remainder within two years from the incorporation of such company, or the corporation will be dissolved.

4. Not to exceed fifty years.

5. Not less than five nor more than thirteen.

6. The number of shares of stock taken by the subscribers of the certificate must, in the aggregate, equal ten per cent of the capital, and at least ten per cent thereof must be paid in cash.

7. No railroad corporation is per-

mitted to have, own or hold stock in such corporations.

As to filing additional certificate by any such corporation desiring or intending to navigate boats, ships or vessels upon any other waters, or in case of ocean steamers between any other or additional ports than those named in the original certificate, see section 11 of chapter 566 of Laws of New York of 1890, p. 1138.

See as to filing and recording of certificate, note 5 to form No. 487, and see same note as to amending certificate and replacing lost or destroyed certificate, and the effect of certificate as evidence.

No. 490.

Affidavit of directors of navigation corporation, to be attached to certificate, form No. 489.

(Laws of N. Y. of 1890, chap. 566, § 10.)

— COUNTY, ss.:

A. B., etc. (inserting names and residences of affiants), being severally duly sworn, say, and each for himself says: That they are (three) of the directors of the (name of corporation), a navigation corporation, incorporated pursuant to the provisions of article 2 of an act of the legislature of the State of New York, known as the transportation corporations law, passed June 7, 1890; that ten per cent of the capital stock of said corporation, to-wit, the sum of — dollars, has been in good faith subscribed and that at least ten per cent of such subscription has been paid in cash.¹

(Signatures of affiants)

(Jurat, as in form No. 32.)

1. Section 10 of chapter 500 of Laws of New York of 1890 (p. 1138), requires the foregoing affidavit of at least three of the directors of the

company named in the certificate of incorporation, to be attached to and filed with the certificate, as a part thereof.

No. 491.

Certificate that capital stock of navigation corporation has been paid in.

(Laws of N. Y. of 1890, chap. 566, § 13.)

We, the undersigned, the president and a majority of the directors of the (name of company), a navigation corporation formed pursuant to chapter 566 of the Laws of the State of New York, passed June 7, 1890, known as the transportation corporations law, do hereby certify pursuant to article 2 of said act, that the whole amount of the capital stock of said corporation has been paid in, to-wit, the sum of — dollars, the last installment thereof having been paid on the — day of —, 1—.

In witness whereof, etc. (as in form No. 489).¹

A. F.,
President.
G. R.
I. J.,
K. L.,
Directors.

— COUNTY, ss.:

A. F., G. R., I. J. and K. L., being severally duly sworn, do depose and say: That said A. F. is the president and G. R., I. J. and K. L. are a majority of the directors of the (name of corporation), mentioned in the foregoing certificate, subscribed by them; that the statements contained in said certificate are true.

(Signatures of affiants.)

(Jurat, as in form No. 32.)

1. This certificate is required by section 12 of chapter 566 of Laws of New York of 1890 (p. 1138), to be made, filed and recorded in the offices where the original certificates of incorporation were filed, within thirty days after the payment of the last installment of the capital stock.

ARTICLE 3.

FORMS RELATING TO STAGE COACH CORPORATIONS.

(Laws of N. Y. of 1890, chap. 566, art. 3.)

No. 492. Certificate of incorporation of stage coach corporation.

493. Certificate by directors of stage coach corporation of alteration or extension of route or routes.

No. 492.

Certificate of incorporation of stage coach corporation.

(Laws of N. Y. of 1890, chap. 566, § 20.)

We, the undersigned,¹ A. B., who resides at the (city) of —, in the county of —, and State of New York; C. D., who resides at, etc. (and so on, giving the name and residence of each corporator, in like manner), do hereby in order to become incorporated for the purpose of establishing, maintaining and operating a stage (or, omnibus) route (or, stage, etc., routes) for public use in the conveyance of persons and property in the city (or, town) of —, in the county of —² [or, of maintaining and operating a stage (or, omnibus) route (or, stage, etc., routes), already established in the city, etc. (as above)], do hereby make, sign and acknowledge the following certificate and statement, pursuant to the provisions of article 3 of chapter 566 of the Laws of New York of 1890, known as the transportation corporations law.

First. The name of said corporation shall be the (insert name).³

Second. The said corporation is to continue for (fifty)⁴ years.

Third. The route (or, routes) upon which it is intended to run as near as it is practicable to state the same, are as follows, to-wit: (stating same).

Fourth. The number of the directors of said corporation shall be (five),⁵ and the names of the directors for the first year are as follows, viz., A. B., C. D., etc.

Fifth. The amount of the capital stock of said corporation shall be — dollars, to be divided into — shares of

— dollars each, of which the said A. B. hereby agrees to take — shares; the said C. D. agrees to take — shares (and so on, giving the number of shares taken by each subscriber to the certificate).

In witness whereof, etc. (as in form No. 489).⁶

(Certificate of acknowledgment by corporators, as in form No. 89.)

1. Five or more persons.
2. The section (§ 2 of chapter 566 of Laws of New York of 1890) is made to apply only to routes elsewhere than in the city of New York.
3. By section 4 of chapter 563 of the Laws of New York of 1890 (p. 1061), which went into effect May 1, 1891, as amended by section 6 of chapter 687 of Laws of New York of 1892, it is provided that no certificate of incorporation of a proposed corporation shall be filed or recorded, having the same name as an existing domestic corporation, or a name so nearly resembling it as to be calculated to deceive, but a corporation formed by the reincorporation, reorganization or consolidation of other corporations, or upon the sale of the property or franchises of a corporation, may have the same name as the corporation, or one of the corporations, to whose franchises it has succeeded.
4. No limit is placed to the continuation of the corporation by the statute, but the number of years for which it is to continue is to be stated.
5. Not less than three nor more than five.
6. By chapter 566 of Laws of New York of 1890, which took effect May 1, 1891, chapter 974 of Laws of 1867, "An act to incorporate stage-coach companies outside of the city of New York," is repealed. See, also, note 5 to form No. 487.

No. 493.

Certificate by directors of stage coach corporation of alteration or extension of route or routes.

(Laws of N. Y. of 1890, chap. 566, § 21.)

We, the undersigned, the directors of the (name of corporation), a corporation duly incorporated under the provisions of article 3 of chapter 566 of the Laws of New York of 1890, passed June 7, 1890, known as the transportation corporations act, do, for the purpose of altering (or, extending), as hereinafter mentioned, the route (or, routes) of said corporation designated in the certificate of incorporation thereof, hereby certify pursuant to said article, as follows, viz :

That by a vote of two-thirds of the directors of said corporation, at a meeting of said directors held at —, on the

— day of —, 1—, the route (or, routes) designated in the certificate of incorporation of said (name of corporation), was altered (or, extended) as follows, to-wit : (state alteration or extension).

In witness whereof, etc. (as in form No. 489).¹

(Signatures of directors.)

Directors.

(Certificate of acknowledgment, as in form No. 89.)

1. This certificate is to be filed in which the office of the corporation is the offices where the original certificates of incorporation were filed, 1890, chap. 566, § 21; Id., chap. 563, § 3, as amended by § 5 of chap. 687 of Laws of N. Y. of 1892.) See, or duplicate original thereof in the also, note 5 to form No. 487. office of the clerk of the county in

ARTICLE 4.

FORMS RELATING TO TRAMWAY CORPORATIONS.

(Laws of N. Y. of 1890, chap. 566, art. 4.)

No. 494. Certificate of incorporation of tramway corporation.

No. 494.

Certificate of incorporation of tramway corporation.

(Laws of N. Y. of 1890, chap. 566, § 30.)

We, the undersigned,¹ A. B., who resides at, etc., C. D. who resides at, etc., E. F., who resides at, etc., G. H., who resides at, etc. (stating name and residence of each subscriber), for the purpose of becoming incorporated under the provisions of article 4 of chapter 566 of the Laws of New York of 1890, passed June 7, 1890, known as the transportation corporations act, for constructing, maintaining and operating an elevated tramway, constructed of poles, etc. (stating according to the provisions of section 30 above referred to) for the transportation of freight in suspended buckets (or, cars; or, name other receptacles), for hire, do

hereby make, sign and acknowledge the following certificate and statement, pursuant to the provisions of said article 4 of said chapter, viz.:

First. That the name of said corporation shall be the (insert name of corporation).²

Second. That the said corporation is to continue for — years.³

Third. That such tramway is to be constructed, maintained and operated from (name of place) to (name of place.)

Fourth. That the length of said tramway is to be (state same) as near as may be stated.

Fifth. That said tramway is made (or, intended to be made) through or in each of the following counties, viz.: The counties of (naming them).

Sixth. That the amount of the capital stock of said corporation is to be — dollars, to be divided into — shares of — dollars each, of which said A. B. hereby agrees to take — shares; said C. D. hereby agrees to take — shares; said E. F. hereby agrees to take — shares; said G. H., etc. (stating in like manner the number of shares taken by each of the subscribers to the certificate).

Seventh. That there are to be (three)⁴ directors of said corporation, and that (said) A. B., who resides in the town (or, city) of —, in the county of —, and State of —; (said) C. D. (who resides in, etc.), and (said) E. F. (who resides in, etc.), are to be the directors of said corporation for the first year.⁵

In witness, etc. (as in form No. 489).⁶

1. Thirteen or more persons.

2. See note 2 to form No. 402, as to name of corporation.

3. The number of years is not limited by the statute, but is required to be stated.

4. Not less than three directors.

5. The residences of the directors

need not be repeated here if they are subscribers to the certificate whose residences are before given.

6. See section 30 of chapter 566 (p. 1139) of Laws of New York of 1890, which took effect May 1, 1891, as to this certificate. See, also, note 5 to form No. 487.

ARTICLE 5.

FORMS RELATING TO PIPE LINE CORPORATIONS.

(Laws of N. Y. of 1890, chap. 566, art. 5.)

- No. 495. Certificate of incorporation of pipe line corporation.
496. Affidavit by directors as to subscription to and payment in money, for stock of pipe line corporation, etc.
497. Notice to owners and occupants through whose land pipe line route lies of filing map.
498. Notice by occupant or owner of lands of application for appointment of commissioners to relocate the line of pipe line corporation.
499. Order appointing commissioners to relocate route of pipe line.
500. Report of such commissioners.
501. Order of court upon report, form No. 499.
502. Petition of pipe line company for permission to construct its line across, along or upon highway or bridge.
503. Notice of motion upon petition, form No. 502.
504. Order of court granting such permission.
505. Monthly statement by pipe line corporation.

No. 495.

Certificate of incorporation of pipe line corporation.

(Laws of N. Y. of 1890, chap. 566, § 40.)

We, the undersigned,¹ A. B., who resides at the (city) of —, in the county of —, and State of (New York); C. D., who resides at, etc. (giving in like manner the names and residences of all the subscribers to the certificate), do hereby for the purpose of becoming incorporated, pursuant to article 5 of chapter 566 of the Laws of New York of 1890, known as the transportation corporations law, for (*) constructing (or, maintaining) and operating for public use, lines of pipe (already constructed) for conveying or transporting therein petroleum (or, gas, etc.), as provided by said law,² do hereby make, sign and acknowledge the following certificate and statement, pursuant to the provisions of said article 5 of said law, to-wit :

First. That the name of said corporation shall be the (insert name).³

Second. That the number of years for which said corporation is to continue shall be — years.⁴

Third. That said pipe line is (to be) constructed (or, maintained) and operated, from (naming place) to (naming place), and will be in length — miles as near as may be stated, and will be (or, is) constructed through or into the counties of (naming same).

Fourth. [State the amount of capital stock, etc., as in the sixth subdivision of form No. 494.]⁵

Fifth. [State number of directors (not less than seven), etc., as in the seventh subdivision of form No. 494.]⁶

In witness whereof, etc. (as in form No. 489).⁷

(Signatures of corporators.)

(Certificate of acknowledgment, as in form No. 89, and affidavit, form No. 496, to be annexed.)

- | | |
|---|--|
| 1. Twelve or more persons. | every mile of pipe constructed or proposed to be constructed. |
| 2. The corporation may be formed either for constructing and operating, or for maintaining and operating for public use, lines of pipe already constructed and owned by any corporation, person or persons, except in the city of New York. | 6. The number of directors required is to be not less than seven. The number of shares to be taken by the subscribers to the certificate must in the aggregate equal ten hundred and fifty dollars for every mile of pipe constructed or proposed to be constructed, twenty-five per cent of which must be paid in cash. |
| 3. See, as to name of corporation, note 2 to form No. 402. | See section 40 of chapter 566 of Laws of New York of 1890, which took effect May 1, 1891, and see note 5 to form No. 487. |
| 4. The number of years must be stated, but is not limited by the statute. | |
| 5. The capital stock must be not less than fifteen hundred dollars, for | |

No. 496.

Affidavit by directors as to subscription to, and payment in money for, stock of pipe line corporation, etc.

(Laws of N. Y. of 1890, chap. 566, § 40.)

— COUNTY, ss.:

A. B., of —, C. D., of —, and E. F., of —, being severally duly sworn, depose and say, and each for himself deposes and says: That they are (three) of the directors of

the (name of corporation), mentioned in the annexed (or, within) certificate: That (more than) ten hundred and fifty dollars of stock for every mile of line proposed to be constructed (or, maintained) and operated by said corporation, has been in good faith subscribed, and twenty-five per cent paid in money thereon, and that it is intended in good faith to construct (or, maintain) and operate the line of pipe mentioned in the said certificate, and that such corporation was not projected or formed with the intent or for the purpose of injuring any person or corporation, nor for the purpose of selling or conveying its franchise to any person or corporation, nor for any fraudulent purpose.¹

(Signatures of affiants.)

(Jurat, as in form No. 32.)

1. See section 40 of chapter 566 of Laws of 1890, which took effect May 1, 1891, as to this affidavit.

No. 497.

Notice to owners and occupants through whose land pipe line route lies of filing map.

(Laws of N. Y. of 1890, chap. 566, § 41.)

To A. B., C. D., etc., owners and occupants of lands, over or across which the route of the pipe line of the (name of company) passes:

You will please take notice that the map and survey of the route adopted and located by said (name of company) for the laying of its pipe line for conveying (stating what), required by law to be made and filed, has been filed in the offices of the clerks of the counties of (naming them), on the — day of —, 1—, and that such route passes over and across the parcels of lands owned or occupied by the persons respectively to whom this notice is directed, and is indicated thereon by a line of stakes consecutively numbered and equally distant, and not more than twenty rods from each other.

Dated —, 1—.

Yours, etc.,

The (name of corporation)

by E. G., Secretary.

1. See section 41 of chapter 566 of Laws of N. Y. of 1890, as to this notice.

No. 498.

Notice by occupant or owner of lands of application for appointment of commissioners to relocate the line of pipe line corporation.

(Laws of N. Y. of 1890, chap. 566, § 41.)

To the (name of corporation) and to C. D.:

You will please take notice that at a Special Term of the Supreme Court to be held at, etc., on, etc., at the opening of the court (or, at — o'clock in the — noon), or as soon thereafter as counsel can be heard, an application will be made pursuant to statute (*) for the appointment of commissioners to relocate the line of the route of the pipe line of said corporation where the same passes through the land owned (or, occupied) by A. F., as the same is laid down on a map of said route filed by said corporation on the — day of —, 1—, in the office of the county clerk of — county, and for such other relief as may be proper: That said application will be made upon the said map and notice of filing thereof served upon said A. F., on the — day of —, 1—, and upon the affidavit (or, petition) of said A. F., a copy of which is annexed hereto and herewith served upon you.¹

Dated —, 1—.

Yours, etc.,

M. N.,

Attorney for A. F.
(Office address.)

(Annex affidavit, etc.)

1. This notice is required by section 41 of chapter 566 of Laws of New York of 1890 to be served upon the president, engineer or any director of the corporation, and upon the owner or occupant of any lands to be affected by the alteration to be proposed by the person making the ap-

plication, ten days previous to the application, and within fifteen days after receiving from the company notice of filing the map of the route. The application is to be made at a Special Term of the Supreme Court in the judicial district in which the lands are situated.

No. 499.**Order appointing commissioners to relocate route of pipe line.**

(Laws of N. Y. of 1890, chap. 466, § 41.)

At, etc. (as in form No. 329).

| | |
|--|---|
| In the matter of the applica- tion of A. F. for a reloca- tion of pipe line route of the (name of company). | } |
|--|---|

On reading and filing (name papers filed) and notice of motion for, etc. (stating same), with proof of due service on, etc., and on motion of C. R., of counsel for A. F., and after hearing P. M., of counsel for the (name of company) (and R. G., of counsel for C. D.), it is hereby

Ordered, That F. P., G. R. and I. L., of, etc., be and they are hereby appointed as commissioners to examine the route located for the said pipe line and the proposed alteration thereof, and that said commissioners shall (here direct mode of proceeding) and that said commissioners do report to the court the facts relating thereto and their opinion as to the proposed alteration, and what, if any, alteration should be made in such line.¹

1. See section 41 of chapter 566 of which took effect May 1, 1891, as to Laws of New York of 1890 (p. 1141), this proceeding.

No. 500.**Report of commissioners appointed to determine as to re-
location of pipe line.**

(Laws of N. Y. of 1890, chap. 566, § 41.)

(Title of proceeding, as in form No. 499.)

To the Supreme Court of the State of New York:

We, the undersigned commissioners appointed in the above entitled proceeding, by an order made at a Special Term of said court, held, etc., do hereby respectfully report:

That (stating facts relating to the change of location, etc.)

And we further report that in our opinion the following alterations should be made in the route of said pipe line, to-wit: (stating same), and that our opinion of the proposed alteration is as follows, viz. (state same).

All of which is respectfully submitted.

Dated —, 1——.¹ (Signature of commissioners.)

1. See section 41 of chapter 566 took effect May 1, 1891, as to this of Laws of New York of 1890, which proceeding.

No. 501.

Order of court upon report of commissioners appointed to determine as to relocation of route of pipe line.

(Laws of N. Y. of 1890, chap. 566, § 41.)

At, etc., as in form No. 329.

(Title of proceeding, as in form No. 499.)

On reading and filing the report, dated —, 1——, of F. P., etc., commissioners appointed in the above entitled proceeding to report as to the alteration and relocation of the route of the pipe line of the (name of corporation), with notice of motion for (the confirmation thereof, and for) the order of the court thereupon, with proof of due service of said notice upon, etc., and after hearing F. L., of counsel for O. F., for said motion, and M. R. and P. I. in opposition thereto, it is hereby

Ordered, That said report be and the same is hereby in all respects confirmed, and that the location of the route of said pipe line be and the same is hereby determined as follows: (state location), and that the costs, fees and charges of said commissioners are hereby fixed at (state same), and that the costs and charges of the proceedings herein are hereby allowed and fixed at the sum of — dollars, and that said costs, fees and charges of said commissioners and of this proceeding be paid by the said (name of corporation; or, by said A. F.), to said commissioners and to said — respectively.

No. 502.

Petition of pipe line company for permission to construct its line across, along or upon highway or bridge.

(Laws of N. Y. of 1890, chap. 566, § 45.)

To the General Term of the Supreme Court of the —
Judicial Department :¹

The petition of the (name of corporation) respectfully shows: That said corporation is a corporation duly organized under article 5 of chapter 566 of the Laws of New York of 1890, known as the transportation corporations law, for constructing (or, maintaining) and operating for public use, lines of pipe for conveying (or, transporting) therein (name what).

That it is necessary that said pipe line shall be constructed across (along or upon) the public highway (or, bridge), known as the (describing same), located in the (town) of —, in the county of —, as appears by the map filed —, 1—, by said corporation, pursuant to said article 5 of chapter 566 of the Laws of 1890, of the route of said pipe line, in the county clerk's office of — county: That your petitioner has applied to the (commissioners of highways) of the said (town) of —, for their consent to the construction of said pipe line across, etc., the said public highway (or, bridge, etc.) upon such terms as might be agreed upon with said (commissioners), but that the consent of said (commissioners) cannot be obtained by your petitioner to construct said pipe line across, etc., the said highway (or, bridge, etc.).

Your petitioner therefore prays that this court will make an order, pursuant to said law, permitting the said corporation, your petitioner, to construct its line across, etc., such highway (or, bridge, etc.)²

Dated —, 1—.

The (name of corporation) by
P. R., its President.

(Verification, as in form No. 323.)

1. The application is to be made to the General Term of the Supreme Court of the Department in which such highway or bridge is situated. (Laws of N. Y. of 1890, chap. 566, § 45, p. 1142.)

2. See section 45 of chapter 566 of Laws of New York of 1890, which took effect May 1, 1891, as to this proceeding.

No. 503.

Notice of motion by pipe line corporation for permission to cross, etc., highway or bridge.

(Laws of N. Y. of 1890, chap. 566, § 45.)

SUPREME COURT:

In the Matter of the Application of the (name of corporation), for permission to construct its pipe line across, etc., the (name highway, etc.).

To E. F. and G. H., commissioners of highways of the town of —, in the county of — (or, direct to municipal authorities of city (or, village)).¹

As in form No. 498, to (*) substituting "General Term" for "Special Term," and from thence as follows; for an order permitting the (name of corporation), to construct its pipe line across, etc., the public highway (or, bridge, etc.) describing same), in such manner and upon such terms as the court may direct, and for such other or further relief as may be proper; That such application will be made upon the petition, a copy of which is hereto annexed.

Dated —, 1—.

Yours, etc.,

M. N.,

Attorney for the (name of corporation).

(Office address.)

1. The petition and notice are required by section 45 of chapter 566 of Laws of New York of 1890, to be served upon the commissioners of highways of the town in which the highway is situated, or the municipal authorities of the village or city where such bridge is located, according to the practice or order of the court, or an order to show cause.

No. 504.

Order of court permitting the pipe line to be constructed across, along or upon highway, etc.

(Laws of N. Y. of 1890, chap. 566, § 45.)

At, etc., as in form No. 329.

(Title of proceeding, as in form No. 503.)

On reading and filing the petition of the (name of corporation), dated —, 1—, with notice of motion and proof of due service thereof upon, etc., and after hearing I. F., of counsel for said petitioner, for the motion, and J. K., of counsel for, etc., in opposition thereto, it is hereby ordered, that the said (name of corporation) be and is hereby permitted to construct its pipe line across, etc., the said highway (or, bridge, etc.), (here state the manner and terms of such construction).¹

1. See section 45 of chapter 566 of Laws of 1890, which took effect May 1, 1891, as to this proceeding. The manner and upon such terms as it court, upon hearing the application, may direct.

No. 505.

Monthly statement by pipe line corporation.

(Laws of N. Y. of 1890, chap. 566, § 52.)

The (name of corporation) hereby makes the following statement, pursuant to the requirements of section 52 of article 5 of chapter 566 of the Laws of New York of 1890, for the month of —, in the year 1—, to-wit :

The amount of all commodities received by said corporation during said month has been as follows: (Stating amount of commodities received.)

The amount of all commodities delivered by said corporation during said month is as follows (stating amount of commodities delivered):

The stock on hand of said corporation on the last day of said month was (stating same), of which (stating how much) is represented by outstanding certificates, vouchers, receipts or orders, and (stating how much) is in credit balances on the books of the corporation.¹

Dated —, 1—.

The (name of corporation)

By A. M., President.

E. G., Secretary.

— COUNTY, ss.:

A. M., of —, and E. G., of —, being duly sworn, depose and say, and each for himself deposes and says: That said A. M. is the president and said E. G. is the secretary of the (name of corporation); that the foregoing statement subscribed by them is in all respects true and correct.

A. M.

E. G.

(Jurat, as in form No. 32.)

1. This statement is required by section 52 of chapter 566 of Laws of New York of 1890, which took effect May 1, 1891, to be made on or before the tenth day of the succeeding month, and verified by the oath of the president and secretary that it is in all respects true and correct, and is to be filed within three days thereafter in the county clerk's office in the county where the principal office of the corporation is located.

ARTICLE 6.

FORMS RELATING TO GAS AND ELECTRIC LIGHT CORPORATIONS.

(Laws of N. Y. of 1890, chap. 566, art. 6.)

No. 506. Certificate of incorporation of gas and electric light corporation.

No. 506.

Certificate of incorporation of gas and electric light corporation.

(Laws of N. Y. of 1890, chap. 566, § 60.)

We, the undersigned,¹ for the purpose of becoming incorporated for the objects hereinafter stated, (*) do hereby

make, sign and acknowledge the following certificate and statement, pursuant to the provisions of article 6 of chapter 566 of the Laws of New York of 1890, passed June 7, 1890, known as the transportation corporations law.

First. The name of the corporation² hereby formed shall be the (name of corporation), and the objects for which said corporation is formed shall be as follows, viz.: The manufacturing and supplying gas for lighting the streets, and public and private buildings of the city (or, village; or, town) of —, in the county of — (or, state other objects designated in section 60 of said act of 1890).

Second. The amount of the capital stock of said corporation shall be — dollars, to consist of — shares of — dollars each.

Third. The term of the existence of the said corporation shall be (fifty) years.³

Fourth. There shall be (three)⁴ directors of said corporation, and A. B., (†) who resides at the city of —, in the county of —, and State of (New York); C. D., who resides, etc. (giving, in like manner, name and residence of each), shall be the directors thereof for the first year.

Fifth. The operations of the said corporation are to be carried on at the (town) of —, in the county of —, in the State of New York.

In witness, etc. (as in form No. 489).⁵

(Signatures of corporators.)

(Certificate of acknowledgment by signers, as in form No. 89.)

1. Three or more persons.

2. See note 2 to form No. 402.

3. Not to exceed fifty years.

4. Not less than three nor more than thirteen.

5. See section 60 of chapter 566 of

Laws of New York of 1890, which chapter took effect May 1, 1891, as to this certificate and its contents.

See, also, note 5 to form No. 487, and see *People ex rel. Municipal Gas Co. v. Rice* (138 N. Y. 151).

ARTICLE 7.

FORMS RELATING TO WATER-WORKS CORPORATIONS.

(Laws of N. Y. of 1890, chap. 566, art. 7.)

- No. 507. Certificate of incorporation of water-works corporation, in town or village.
508. Permit of town or village authorities authorizing the formation of such corporation.
509. Affidavit of three directors, as to subscription and payment for capital stock

No. 507.**Certificate of incorporation of water-works corporation, in city, town or village.**

(Laws of N. Y. of 1890, chap. 566, § 80, as amended by chap. 617 of Laws of N. Y. of 1892.)

We, the undersigned, A. B., whose post-office address is (stating same); C. D., whose post-office address is (stating same), [and so on, stating in like manner the names and post-office addresses of the subscribers],¹ in order to become incorporated for the purpose of supplying water to the city (or, town ; or, village) of —, in the county of —, and State of New York, and the inhabitants thereof, do (continue as in form No. 506, from (*) to word "First," substituting word "seventh" for word "sixth" therein, and proceed as follows) :

First. That the name of said corporation shall be the (insert name).²

Second. That the amount of the capital stock of said corporation shall be — dollars, to be divided into — shares of — dollars each, of which said A. B. hereby agrees to take — shares, C. D. hereby agrees to take — shares, etc. (stating number of shares agreed to be taken by each subscriber to the certificate).³

Third. That the principal office of said corporation is to be located in the city (or, town ; or, village) of —, in the county of —, and State of New York.

Fourth. There shall be (seven)⁴ directors of said corporation, and A. B., etc. (conclude as in subdivision 4 of form No. 506, from (†).)

Fifth. That the permit of the authorities of the said city (or, town, or, village) of —, which town, etc., it is proposed to supply with water, required by said article 7 of chapter 566 of the Laws of New York of 1890, as amended by chapter 617 of Laws of New York of 1892, authorizing the formation of such corporation, for the purpose of supplying such city (or, town; or, village) with water, has been obtained and granted, and that said permit is hereto annexed.⁵

In witness whereof, etc. (as in form No. 489).⁶

(Signatures of corporators.)

(Certificate of acknowledgment by corporators, as in form No. 89.)

(Annex permit and affidavit, forms Nos. 508, 509.)

- | | |
|--|--|
| 1. Seven or more persons. | affidavit of such payment, see form |
| 2. See note 2 to form No. 402. | No. 509. |
| 3. The aggregate of the shares taken by the subscribers is required by section 80 of chapter 566 of Laws of New York of 1890, to be at least one-tenth of the capital stock, and ten per cent thereof is required to be paid in cash to the directors. For | 4. Not less than seven directors. 5. See form of permit, form No. 508. 6. See section 80 of chapter 566 of Laws of New York of 1890, which took effect May 1, 1891, as to this certificate and its contents. See, also, note 5 to form No. 487. |

No. 508.

Permit of city, town or village authorities authorizing the formation of corporation, for the purpose of supplying such city, town or village with water.

(Laws of N. Y. of 1890, chap. 566, § 80, as amended.)

We, the undersigned, a majority of the board of trustees of the incorporated village of —, in the county of — [or (a majority of the officers holding the offices of), the supervisor, justice of the peace, town clerk and highway commissioners of the town of —, in the county of —; or, the board of water commissioners, etc., of the city of —, in the county of —], do hereby, pursuant to the provisions of article 7 of chapter 566 of the Laws of New York of 1890, known as the transportation corporations law, as amended by chapter 617 of the Laws of New York of 1892, permit and authorize the formation of a corporation, to be called the (insert intended name of corporation), for the purpose of supplying the said village [or, said town; or, the part of said

town described as follows: (describing same), or, said city], with water.¹

In witness whereof, etc. (as in form No. 489.)

A. M.,

M. N.,

N. P.

A majority of the board of trustees of said village.

(Or, A. M., Supervisor,

M. N., Justice of the Peace,

O. F., Town Clerk.

N. P.,

M. L., Commissioners of Highways.)

(Or, A. M., etc., Board of Water Commissioners, etc., of the city of —.)

(Certificate of acknowledgment by officers, as in form No. 89.)

1. See section 80 of chapter 566 of York of 1892, as to this permit, which Laws of New York of 1890, which act is to be annexed to the certificate of took effect May 1, 1891, as amended incorporation, form No. 507, at the by chapter 617 of Laws of New time of the filing thereof.

No. 509.

Affidavit of three directors of city, town or village water-works company as to subscription and payment for capital stock.

(Laws of N. Y. of 1890, chap. 566, § 80, as amended.)

— COUNTY, ss.:

A. B., of —, C. D., of —, and E. F., of —,¹ being severally duly sworn, depose and say, and each for himself deposes and says: That they are three of the directors of the (name of corporation), a water-works corporation, formed pursuant to article 7 of chapter 566 of the Laws of New York of 1890, known as the transportation corporations law, passed June 7, 1890, as amended: That the amount of the capital stock of said corporation required by said article to be subscribed, to-wit, one-tenth thereof, has been subscribed and paid in cash.¹

(Signatures of affiants.)

(Jurat, as in form No. 32.)

1. See section 80 of chapter 566 of Laws of 1890, as amended by chapter 617 of Laws of New York of 1892, as to this affidavit, which is to be annexed to the certificate of incorporation, form No. 507, at the time of the filing thereof.

ARTICLE 8.

FORMS RELATING TO TELEGRAPH AND TELEPHONE CORPORATIONS.

(Laws of N. Y. of 1890, chap. 566, art. 8.)

No. 510. Certificate of incorporation of telegraph or telephone company.

511. Amended certificate of electric telegraph or telephone corporation.

512. Affidavit of three directors to be annexed to amended certificate, form No. 511.

No. 510.

Certificate of incorporation of telegraph or telephone company.

(Laws of N. Y. of 1890, chap. 566, § 100.)

We, the undersigned,¹ A. B., whose post-office address is at the (city) of —, in the county of — and State of New York; C. D., whose post-office address is at, etc. (giving names and post-office addresses of subscribers), for the purpose of becoming incorporated for constructing, owning, using and maintaining a line (or, lines) of electric telegraph (or, telephone), as hereinafter stated [or, for the purpose of owning an interest in (certain grants heretofore made, for) a line (or, lines) of electric telegraph (or, telephone), as hereinafter stated], do hereby, pursuant to the provisions of article 8 of chapter 566 of the Laws of New York of 1890, known as the transportation corporations law, execute and acknowledge the following certificate and statement, viz.:

First. The name of said corporation shall be the (stating same).²

Second. The general route (or, routes) of said line (or, lines) of electric telegraph (or, telephone) is to be as follows: (stating same) and the points to be connected thereby are (stating in full all the points to be connected).

Third. The capital stock of said corporation is to be — dollars, to be divided into — shares of — dollars each; of which said A. B. hereby agrees to take — shares; said C. D. hereby agrees to take — shares, etc. (stating shares agreed to be taken by each of the subscribers).

Fourth. The term of existence of said corporation shall be — years.³

Fifth. There shall be — directors⁴ of said corporation and (said) A. B., who resides at the (city) of — in the county of — and State of (New York); (said) C. D., who resides at, etc. (stating name and residence of each), shall be the directors thereof for the first year.⁵

In witness, etc. (as in form No. 489).⁶

(Signatures of corporators.)

(Certificate of acknowledgment by corporators, as in form No. 89.)

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| 1. Seven or more persons. | when they are subscribers to the certificate. |
| 2. See note 2 to form No. 402. | |
| 3. The term of existence is required to be stated, but is not limited by the statute. | 6. See section 100 of chapter 566 of Laws of New York of 1890, which act took effect May 1, 1891, as to this certificate and its contents. |
| 4. Not less than seven directors. | See, also, note 5 to form No. 487. |
| 5. It will not be necessary to repeat the residences of the directors, | |

No. 511.

Amended certificate of electric telegraph or telephone corporation.

(Laws of N. Y. of 1890, chap. 566, § 101.)

We, the undersigned, being (more than) two-thirds of the directors of the (name of corporation), a corporation formed under article 8 of chapter 566 of Laws of New York of 1890, for the purpose of constructing, owning, using and maintaining the line (or, lines) of electric telegraph (or, telephone) hereinafter mentioned and described, which line (or, lines) is (or, are) not described in the original certificate of incorporation of said corporation, do hereby execute and acknowledge, pursuant to said article 8, this amended certificate and statement, as follows, viz.:

That the general route of the line (or, lines) of electric telegraph (or, telephone) so desired to be owned, used and maintained by said corporation in addition to that (or, those)

specified in said certificate of incorporation, is as follows, to-wit: (Describing same), and that the extreme points connected thereby are (stating same).

In witness, etc. (as in form No. 489).

(Signatures of directors.)

Directors.

(Certificate of acknowledgment, as in form No. 89.)

(Annex affidavit, form No. 512.)

1. See section 101 of chapter 566 of Laws of New York of 1890, as to this amended certificate.

No. 512.

Affidavit of three directors to be annexed to amended certificate of electric telegraph or telephone corporation, form No. 511.

(Laws of N. Y. of 1890, chap. 566, § 101.)

— COUNTY, ss.:

A. B., of —; C. D., of —, and E. F., of —, being severally duly sworn, do depose and say, and each for himself says: That they are (three) of the directors of the (name of corporation); that the written consent of the persons owning (more than) two-thirds of the capital stock of said corporation has been obtained to the owning, using and maintaining the line (or, lines) of electric telegraph (or, telephone) described in the within (or, annexed) amended certificate.¹

(Signatures of affiants.)

(Jurat, as in form No. 32.)

1. This affidavit is required by section 101 of chapter 566 of Laws of New York of 1890, to be indorsed upon or annexed to and filed with and to be a part of amended certificate, form No. 511.

ARTICLE 9.

FORMS RELATING TO TURNPIKE, PLANK ROAD AND BRIDGE CORPORATIONS.

(Laws of N. Y. of 1890, chap. 566, art. 9.)

- No. 513. Certificate of incorporation of turnpike, plank road, bridge, causeway, etc., corporation.
514. Affidavit of directors to be indorsed on or annexed to certificate of incorporation of turnpike, plank road, etc., corporation.
515. Agreement of commissioners of highways and supervisor, with plank road or turnpike corporation for use of highway.
516. Consent of owners of property to taking of highway for plank road or turnpike.
517. Application to board of supervisors for authority to lay out a plank road or turnpike, or to construct a bridge.
518. Notice of application to board of supervisors for authority to lay out plank road or turnpike, or construct bridge.
519. Notice of special meeting of board of supervisors for hearing application of plank road, turnpike or bridge corporation, for authority to construct such road or bridge.
520. Affidavit of service of notice of meeting, form No. 519.
521. Order of board of supervisors authorizing the construction of plank road or turnpike.
522. Survey and description of the route of plank road or turnpike by commissioners appointed to lay out same.
523. Oath of commissioners to lay out plank or turnpike road.
524. Release by owner of real property to plank or turnpike road corporation for the use of its road.
525. Certificate of commissioners of highways of completion of bridge or of turnpike or plank road.
526. Petition by commissioners of highways for order to change location of gate of plank or turnpike road.
527. Notice of application upon petition form No. 526.
528. Order of County Court upon application by commissioners of highways for change of location of gate of plank road or turnpike corporation.
529. Notice of appeal from order of County Court changing, etc., location of gate on plank road or turnpike.
530. Notice of motion for appointment of referees, in appeal from order of County Court changing, etc., location of toll-gate on plank road or turnpike.
531. Order of Supreme Court appointing referee, on appeal from order of County Court changing, etc., location of toll-gate upon plank road or turnpike.
532. Oath of referees appointed upon appeal from order changing, etc., location of toll-gate upon plank road or turnpike.
533. Report of such referees.

- No. 534.** Order for judgment upon appeal from order changing, etc., location of toll-gate upon plank road or turnpike.
- 535.** Judgment of General Term of Supreme Court on appeal from order changing, etc., location of toll-gate on plank road or turnpike.
- 536.** Order of county judge fixing security to be given on such appeal.
- 537.** Undertaking on such appeal.
- 538.** Notice to toll-gatherer, etc., by commissioners of highways, etc., to put road in good condition.
- 539.** Notice of appeal to County Court from order of commissioners of highways opening toll-gates upon road of plank road or turnpike corporation.
- 540.** Notice of hearing of such appeal.
- 541.** Order of County court affirming, etc., order of commissioners of highways on such appeal.
- 542.** Order of commissioners of highways ordering toll-gates of plank road or turnpike corporation to be thrown open.
- 543.** Notice of location of office of plank road or turnpike corporation.
- 544.** Certificate of consolidation of two or more plank road or turnpike corporations, and of changing name.
- 545.** Consent to abandonment of the whole or part of plank road or turnpike.
- 546.** Declaration by directors of abandoning of plank road or turnpike in whole or in part.
- 547.** Notice of appeal to county judge by plank road or turnpike corporation from decision of assessors.
- 548.** Notice by president or secretary of plank road or turnpike corporation to road inspector of encroachment of fence or other structure upon road.
- 549.** Order by road inspector to remove fence or other structure from plank road or turnpike.
- 550.** Consent of board of supervisors to extension of corporate existence of plank road or turnpike corporation.
- 551.** Statement of president and treasurer to be filed with certificate of continuance of existence of plank road or turnpike company.
- 552.** Consent of stockholders of plank road or turnpike corporation to extension of corporate existence.

No. 513.

Certificate of incorporation of turnpike, plank road, bridge, causeway, etc., corporations.

(Laws of N. Y. of 1890, chap. 566, § 120.)

We, the undersigned, A. B., whose post-office address is at the (city) of —, in the county of — and State of New York; C. D., whose post-office address is at, etc. (stating names of subscribers and their post-office addresses), do

hereby, in order to become a corporation for the purpose of constructing, maintaining and owning a turnpike (or, plank road; or, bridge; or, causeway, etc.), as hereinafter mentioned, do hereby sign and acknowledge the following certificate and statement, pursuant to the provisions of article 9 of chapter 566 of the Laws of the State of New York, passed June 7, 1890, known as the transportation corporations law, to-wit:

First. That the name of said corporation shall be the (insert same).¹

Second. That the duration of said corporation shall be (fifty) years.²

Third. That the amount of the capital stock of said corporation shall be — dollars, to be divided into — shares of — dollars each, of which said A. B. hereby agrees to take — shares; said C. D. hereby agrees to take — shares (and so on, stating the number of shares agreed to be taken by each subscriber).³

Fourth. That the number of the directors of said corporation shall be —, and the names and post-office addresses of the directors for the first year are as follows, to-wit: (Said) A. B. (whose post-office address is at the (city) of —, in the county of —, and State of (New York); (said) C. D. (whose post-office address is at —, etc.), [naming such directors and giving post-office address of each, but the post-office address need not be repeated of those who are subscribers to the certificate].

Fifth. That the termini of the (road) proposed to be constructed, maintained and owned by said corporation are as follows, to-wit: The (city) of —, in the county of —, and State of New York, and the (town) of —, in the county of —, in the State of New York, said road commencing at (describing place) in said city, and terminating at (describing place) in said town.⁴

Sixth. That the length of said (road) is to be — miles, and the names of the towns, cities and villages into or through which said (road) is to pass are as follows, to-wit: The (said) city of —, in the county of —, the town of —, in the county of —, etc. (naming each city, town or

village), or, that said bridge is to be located at (stating location) and the plan thereof is as follows, viz.: (stating same.)

In witness whereof, etc. (as in form No. 402).⁵

(Signatures of corporators.)

(Certificate of acknowledgment by corporators, as in form No. 89.)

(Annex affidavit, form No. 514.)

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| <p>1. See note 2 to form No. 402.</p> <p>2. Not to exceed fifty years.</p> <p>3. The aggregate of the subscriptions to stock by the subscribers to the certificate shall be not less than five hundred dollars for each mile of road, or if a bridge corporation, not less than one-fourth of the capital stock, and five per cent thereof must be actually paid in cash.</p> | <p>4. This fifth paragraph does not apply to the case of a bridge.</p> <p>5. See section 120 of chapter 566 of Laws of New York of 1890, which took effect May 1, 1891, as to this certificate and its contents.</p> <p>See, also, note 5 to form No. 487.</p> |
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No. 514.

Affidavit of directors to be indorsed on or annexed to certificate of incorporation of turnpike, plank road, etc., corporation.

(Laws of N. Y. of 1890, chap. 566, § 120.)

— COUNTY, ss.:

A. B., of —, C. D., of —, and E. F., of —, being severally duly sworn, depose and say, and each for himself deposes and says: That they are (three) of the directors of the (insert name of corporation), the corporation named in the within (or, annexed) certificate of incorporation. That the amount of capital stock of said corporation required by section 120 of the act of the legislature of the State of New York, passed June 7, 1890, known as the transportation corporations law, to-wit, at least five hundred dollars for every mile of (road) intended to be built by said corporation (or, not less than one-fourth of the amount of the capital stock of said corporation)¹ has been subscribed, and that five per cent of the said amount has been actually paid in cash.²

(Signatures of affiants.)

(Jurat, as in form No. 32.)

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| <p>1. Insert this clause in brackets in the case of a bridge corporation.</p> <p>2. See section 120 of chapter 566</p> | <p>of Laws of New York of 1890, which took effect May 1, 1891, as to this affidavit and its contents.</p> |
|--|---|

No. 515.

Agreement of commissioners of highways and supervisor with plank road or turnpike corporation for use of highway.

(Laws of N. Y. of 1890, chap. 566, § 122.)

It is hereby agreed between A. M., supervisor of the town of —, in the county of —, and M. N. (and F. P.), the commissioner (or, a majority of the commissioners) of highways of said town, parties of the first part, and the (name of corporation), party of the second part, the consent of (more than) two-thirds of all the owners of land bounded on or along the highway hereinafter mentioned, having been first obtained to this agreement, which consent is hereto annexed, that the amount of the compensation and damages to be paid by said corporation for taking and using the (part of the) public highway, leading from — to — [which part is described as follows, to-wit: (describing same)], for the construction of the plank (or, turnpike) road of said corporation, shall be the sum of — dollars, and that upon payment of said sum to the said commissioners, to be expended by them in improving the highways of said town, the said corporation shall have the right to take and use the said (part of the) public highway for the purpose of constructing and using said plank road (or, turnpike), thereupon during the time it shall be required or needed therefor by said company.

In witness, etc. (as in form No. 181).¹

A. M.,
Supervisor.

M. N.,
[F. P.],
Commissioner (or, commissioners).

In presence of
M. R.

(Annex consent of owners, form No. 516.)

1. This agreement is required by the statute to be in writing, and to be filed and recorded in the town clerk's office of such town. (Laws of N. Y. of 1890, chap. 566, § 122, p. 1154.)

See, also, *Ireland v. The Oswego, Hannibal and Sterling Plank Road Co.* (13 N. Y. 526); *Benedict v. Gout* (3 Barb. 459); *Walker v. Caywood* (31 N. Y. 51); *Palmer v. Fort Plain*

and Cooperstown Plank Road Co. (11 id. 376), as to the construction of the statute of 1847, relating to such agreement, section 26 of which statute, taken in connection with section 1 of chapter 626 of Laws of 1853, is substantially the same as the above section, and see the agreement contained in the last cited case. The act of 1847 above referred to is repealed by chapter 566 of Laws of 1890, which went into effect May 1, 1891.

No. 516.

Consent of owners of property to taking of highway for plank road or turnpike.

(Laws of N. Y. of 1890, chap. 566, § 122.)

We, the undersigned, owners of land along the highway leading from — to —, actually residing on (that part of) said highway (on which the plank road or turnpike of the (name of corporation) is to be constructed), do hereby consent, pursuant to statute, to the taking of (such part of) said highway for the purpose of said road, by said corporation.¹

Dated —, 1—.

(Signatures of owners.)

1. See section 122 of chapter 566 of Laws of New York of 1890, as to this consent, and see note 1 to form No. 515.

No. 517.

Application to board of supervisors for authority to lay out a plank road or turnpike or to construct a bridge.

(Laws of N. Y. of 1890, chap. 566, § 123.)

To the board of supervisors of the county of —: ¹

The (name of corporation), a plank road (or, turnpike; or, bridge), corporation duly incorporated under article 9 of chapter 566 of the Laws of 1890 of the State of New York, passed June 7, 1890, known as the transportation corporations law, for the purpose of constructing, maintaining and owning a plank road, etc., between the points (and upon the route) hereinafter mentioned, hereby applies to you for authority to lay out (build) and construct a plank road (or, turnpike; or, bridge) from — to — [upon the following route (stating route of road); or, across the —], and to take the necessary real estate for such purpose, the lands necessary for the construction of said road (or, bridge) in

said county not having been procured by gift or purchase, and the right to take and use (a part of) the highway in said county leading from — to — not having been procured by agreement with the supervisor and commissioners of highways of the town (or, towns) of —, in which such highway is situated, and that three commissioners may be appointed pursuant to said statute to lay out the said (road).²

Dated —, 1—.

The (name of corporation)

By J. B., President.

L. M.,

Secretary.

1. The application is to be made to the board of supervisors of each county, in which such bridge or road, or any part thereof, is to be located.

2. See chapter 566 of Laws of New York of 1890, section 123, page 1155, which took effect May 1, 1891, as to this application.

No. 518.

Notice of application to board of supervisors for authority to lay out plank road or turnpike, or to construct bridge.

(Laws of N. Y. of 1890, chap. 566, § 123.)

Notice is hereby given, pursuant to statute, that an application will be made and presented by the (name of corporation), to the board of supervisors of the county of —, at a meeting of said board to be held at —, on the — day of —, 1—, at — o'clock in the — noon, for authority to lay out (build) and construct [in the said county], the road (or, bridge) of said corporation, and to take the necessary real estate for such purpose. Said road is proposed to be constructed from — to —, through the following cities (villages and towns), to-wit: (specify same), and is to be — miles in length (or, said bridge is proposed to be constructed between — and —, across the —, and is to be — feet long and — feet in breadth).¹

Dated —, 1—.

The (name of corporation),

by E. F., President.

G. H., Secretary.

1. This notice is to be published for six successive weeks, in at least one public newspaper printed in each

county. (Laws of N. Y. of 1890 chap. 566, p. 1155, § 123.)

See, also, note 1 to form No. 517.

No. 519.

Notice of special meeting of board of supervisors for hearing application of plank road, turnpike or bridge corporation, for authority to construct such road or bridge.

(Laws of N. Y. of 1890, chap. 566, § 123.)

To the supervisors of the county of — :

Gentlemen: Take notice that a special meeting of the board of supervisors of the county of — will be held at —, on the — day of —, 1—, at — o'clock in the — noon, for the purpose of hearing the application of the (name of corporation), a plank road (or, turnpike ; or, bridge) corporation, for authority to lay out and construct a plank road (or, turnpike ; or, bridge), from — to —, through the following cities (towns and villages), viz.: (specify same), [or, between — and — across the —] and to take such action thereupon as the said board may deem advisable.

Witness our hands this — day of —, 1—. ¹

A. F.,

G. H.,

I. J.,

Supervisors of said county.

1. If the corporation desires a special meeting of the board of supervisors for hearing the application, any three members of the board may fix a time when the same shall be held, and notice thereof shall be served upon each of the other supervisors, by delivering the same to him personally, or leaving it at his place of residence at least twenty days before the meeting, and the expenses of such special meeting, and of notifying the members of the board thereof, shall be paid by the corporation. (Laws of N. Y. of 1890, chap. 566, p. 1155, § 123.) See, also, note 2 to form No. 517.

No. 520.

Affidavit of service of notice of meeting, form No. 519.

(Laws of N. Y. of 1890, chap. 566, § 23.)

— COUNTY, ss.:

A. M., of —, being duly sworn, says, that on the — day of —, 1—, he served a notice, of which the annexed is a copy, upon M. R., one of the members of the board of supervisors of the county of —, by delivering the same to

the said M. R., personally (or by leaving the same at the place of residence of said M. R. in the (town of —, in said county).¹

A. M.

(Jurat, as in form No. 32.)

(Annex notice, form No. 519.)

1. See section 123 of chapter 566 form No. 519, as to service of this of Laws of 1890, cited in note 1 to notice, and see notes to form No. 517.

No. 521.

Order of board of supervisors authorizing construction of plank road or turnpike.

(Laws of N. Y. of 1890, chap. 566, §§ 123, 124.)

At a (special) meeting of the board of supervisors of the county of —, held at, etc., on the — day of —, 1—.

Present — A. B., C. D., etc.

The (name of corporation) having heretofore made application, pursuant to statute, at a regular (or, special) meeting of this board, legally held at —, on the — day of —, 1— (pursuant to notice, fixing the time thereof, given by three members of said board, and duly served upon each of the other supervisors of said county),¹ for authority to lay out and construct a plank road (or, turnpike) from — to —, upon the following route, viz.: (set forth same as stated in the application), [or, a bridge from — to —, across the —], and due notice of said application at said meeting having been given by said company previous to presenting the same to such board, in the manner required by law, and the said board having heard the said application and all persons appearing and desiring to be heard having been heard in respect thereto, and the said board having taken testimony in respect to said application (or, testimony in respect to said application having been taken by a committee of said board, who were duly authorized by said board to take the same) [and the hearing thereof having been duly adjourned from time to time to this time]:

Now, therefore, it is hereby ordered, after hearing said application, that the said (name of corporation) be and it is

hereby authorized to construct such a road (or, bridge), and to take the real estate necessary for that purpose. [And it is hereby further ordered that L. M., M. N. and H. P., (three) disinterested persons who are not the owners of real estate in any town through which the said road is proposed to be constructed, or in any adjoining town, be and they are hereby appointed commissioners to lay out such road.]²

1. Insert this clause, in brackets, in the office of the clerk of the county when the meeting is a special one. in which such bridge or road is located before any act shall be done under it.

2. See as to this order sections 123 and 124 of chapter 566 of Laws of New York of 1890, p. 1155. See, also, notes to forms Nos. 517-520.

A copy of the order certified by the clerk of the board is to be recorded

No. 522.

Survey and description of the route of plank road or turnpike, by commissioners appointed to lay out same.

(Laws of N. Y. of 1890, chap. 566, § 124.)

The undersigned, duly appointed by the supervisors of the county (or, counties) of (naming same) as commissioners to lay out a plank road (or, turnpike) from — to — upon the following route, viz.: (insert route as in application) after taking the oath prescribed by the Constitution have proceeded without unnecessary delay to lay out the route of such road in such manner as in their opinion will best promote the public interests, and have heard all persons interested who have applied to them to be heard (and have taken testimony in relation thereto), and have caused the following accurate survey and description to be made of such road, and of the necessary buildings and gates, to-wit: (Insert survey and description.)

Dated at —, this — day of —, 1—.¹

M. N., etc.,

Commissioners.

(Acknowledgment by commissioners, substantially as in form No. 89.)

1. The commissioners are required the county. (Laws of N. Y. of 1890, to cause this survey and description chap. 566, p. 1155, § 124.) to be recorded in the clerk's office of If the road is situated in more

than one county such survey and description are to be separate as to that portion in each county, and filed in the office of the clerk of the county to which it relates. The corporation is required to pay each commissioner three dollars for every day spent by him in the performance of his duties and his necessary expenses.

See section 125 of chapter 566 of Laws of New York of 1890, as to entering upon by the corporation, and taking and holding for the purposes of its incorporation, the lands described in such survey as necessary for the construction of its road, and requisite buildings and gates. If for any cause the owner

of any such lands shall be incapable of selling the same, or his name or place of residence cannot with reasonable diligence be ascertained or the corporation is unable to agree with the owner for the purchase thereof, it may acquire title by condemnation.

Section 3357 of the New York Code of Civil Procedure provides that whenever any person is authorized to acquire title to real property for a public use by condemnation, the proceeding for that purpose shall be taken in the manner prescribed in title 1 of chapter 23 of that code. See forms Nos. 323, etc., contained herein under that statute.

No. 523.

Oath of commissioners appointed to lay out plank or turnpike road.

(Laws of N. Y. of 1890, chap. 566, § 124; N. Y. Const., art. 12, § 1.)

COUNTY OF —, ss.:

We do severally solemnly swear (or, affirm) that we will support the Constitution of the United States, and the Constitution of the State of New York, and that we will faithfully discharge the duties of the office of (*) commissioners to lay out a plank (or, turnpike) road from — to —, according to the best of our ability.¹

A. B.,

C. D.,

E. F.,

Commissioners.

(Jurat, as in form No. 32.)

1. As to officers before whom this oath may be taken and subscribed, see article 3, title 6, chapter 5 of New York Revised Statutes, part 1 (1 N. Y. R. S., 119; 7th ed., 367). This oath is required to be taken by the

commissioners before entering upon their duties. (Laws of N. Y. of 1890, chap. 566, § 124, p. 1155.)

See, also, generally as to this proceeding, notes to forms Nos. 521, 522.

No. 524.**Release of real property by owner to plank or turnpike road corporation, for the use of its road.**

Quit-claim deed of property, as in form No. 574, adding after description the words, as follows, viz.: for the uses and purposes of constructing thereon a plank (or, turnpike) road, and for no other purpose whatever.

In witness, etc. (as in form No. 574).

A. B. [L. S.]

In presence of

C. B. [L. S.]

E. F.

(Acknowledgment or proof, as in form No. 89.)

No. 525.**Certificate of commissioners of highways, of completion of bridge or of turnpike, or plank road.**

(Laws of N. Y. of 1890, chap. 566, § 129.)

We, the undersigned (a majority of), the commissioners of highways of the town of —, in the county of —, do hereby certify, pursuant to the provisions of section 129 of article 9 of chapter 566 of the Laws of New York of 1890, passed June 7, 1890, known as the transportation corporations law, that upon the application of the (name of corporation), we (or, the said commissioners)¹ have inspected the portion of the plank road (or, turnpike) of said corporation, situated in the said town of — (or, the bridge of said (name of corporation), situated in said town crossing the —), and that we are satisfied that the said portion of said road (or, said bridge) is made and completed as required by law and in a manner safe and convenient for the public use.²

In witness whereof, etc. (as in form No. 403).

(Signature of commissioners.)

(A majority of said) commissioners.

1. Use the words in brackets where the certificate is made by a majority of the commissioners.

2. See section 129 of chapter 566 of Laws of New York of 1890, which act took effect May 1, 1891, as to this

certificate, and see section 128 of the same chapter as to the manner of construction of such bridge and the bridges to which the provisions of that chapter are applicable. The certificate is to be filed in the office of the county clerk. Each commis-

sioner shall be paid by the corporation two dollars per day for his services and necessary expenses.

See, also, *The Eastern Plank Road Company v. Vaughan* (14 N. Y. 546).

No. 526.

Petition by commissioners of highways for order to change location of gate of plank road or turnpike road.

(Laws of N. Y. of 1890, chap. 566, § 133.)

To the County Court of — county:

The petition of A. B. (and) C. D. (and E. F.) respectfully shows that they are (a majority of) the commissioners of highways of the town of —, in the county of —; that your petitioners are of the opinion that the toll-gate located on the road of the (name of corporation), a plank road (or, turnpike) corporation, at (describing situation), in the town of —, in said county (which said town adjoins the town of —), is unjust to the public interest, by reason of the proximity of diverging roads, to-wit (naming such roads) [or, by reason, etc. (stating other reasons)].

Wherefore, your petitioners pray that an order may be granted to alter or change the location of the said gate to (describing new location),¹ pursuant to the provisions of section 133 of article 9 of chapter 566 of the Laws of New York of 1890, known as the transportation corporations law.

Dated —, 1—,

A. B.

C. D.

E. F.

— COUNTY, ss.:

A. B., C. D. and E. F., being severally duly sworn, say: That they have read the foregoing petition subscribed by them and know the contents thereof; that said petition is

true to their knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters they believe it to be true.²

(Signatures of petitioners.)

(Jurat, as in form No. 32.)

1. See section 133 of chapter 566 of Laws of New York of 1890, page 1158, as to this proceeding, also notes to forms Nos. 527, 528. 2. The statute does not, in terms, require the petition to be verified. The application must be made by (Id.)

No. 527.

Notice of application upon petition, form No. 526.

(Laws of N. Y. of 1890, chap. 566, § 133.)

To M. N., the president (or, secretary) of the (name of corporation):

Take notice that upon the petition, a copy of which is hereto annexed and herewith served upon you, an application will be made, at a term of the — County Court, to be held at, etc., on, etc., at the opening of the court on that day (or, at — o'clock in the — noon of that day), or as soon thereafter as counsel can be heard, for an order to alter or change the location of the gate of the plank road (or, turnpike) of the (name of corporation) mentioned in the said petition, to the place mentioned in the said petition or other proper location, and for such other and further relief as may be proper.²

Dated —, 1—.

Yours, etc.,

M. F.,

Attorney for A. B., etc. (a majority of the) commissioners of highways of the town of —, in the county of —.

(Office address.)

1. See section 133, referred to in note 1 to last form, No. 526 as to this notice, which is required to be a fifteen days' notice, and see that note generally as to this proceeding.

No. 528.

Order of County Court upon application by commissioners of highways, for change of location of gate of plank road or turnpike corporation.

(Laws of N. Y. of 1890, chap. 566, § 133.)

At a term of the County Court of — county, held at, etc.,
on, etc.

Present: Hon. J. H. C., Judge

In the matter of the applica-
tion of A. B., etc. (a ma-
jority of) the commission-
ers of highways of the town
of —, in the county of
—, for a change in the
location of a toll gate on
the plank road (or, turn-
pike) of the (name of cor-
poration).

On reading and filing the petition, dated —, 1—, of
A. B., etc. (a majority of the) commissioners of highways of
the town of —, in the county of —, praying for an order
to alter or change the location of a toll gate located in said
town, upon the plank (or, turnpike) road of the (name of
corporation) from its present location at (describing loca-
tion as in petition, form No. 526), to (stating place as in pe-
tition) or other proper location, with proof of due service
more than fifteen days since of notice of this application
upon M. N., president (or, secretary) of said company, and
on reading and filing (name other papers read on the mo-
tion), and on motion of G. R., of counsel for said commis-
sioners, and after hearing H. L. for the said corporation (or,
no one appearing to oppose) [and on viewing said premises];¹
it is hereby ordered that, etc.²

1. Insert this clause in brackets, in case the court shall have deemed such view necessary. (Section 133, *supra*.) 2. The court is to make such order in the matter as may be just and proper. (Id.)

See, also, *McAllister v. The Albion Plank Road Company* (10 N. Y. 353), for which said section 133 of chapter 566 of Laws of 1890, repealing said act of 1847, is a substitute. *Said chapter 566 took effect May 1, 1891*

No. 529.

Notice of appeal from order of County Court changing, etc., location of gate on plank road or turnpike.

(Laws of N. Y. of 1890, chap. 566, § 133.)

(Title of proceeding, as in form No. 528.)

Take notice that A. B. (and) C. D. (and E. F.), (a majority of the) commissioners of highways of the town of —, in the county of —, hereby appeal [or that the (name of corporation) hereby appeals] to the General Term of the Supreme Court from the order made in the above entitled proceeding by the County Court of — county, at a term thereof, held at —, on the — day of —, 1—, and entered in the — clerk's office.¹

Yours, etc.,

F. P.,

Attorney for commissioners (or, for said company.)
(Office address.)

To A. B., attorney for the (name of corporation) (or, To A. B., etc., (a majority of the) commissioners of highways of town of —) and the county clerk of the county of —.

1. Either party may, within fifteen days thereafter, appeal from such order to the General Term of the Supreme Court, on giving such security as the county judge making the order may prescribe. (Laws of N. Y. of 1890, chap. 566, § 133.)

the appeal. (*McAllister v. The Albion Plank Road Company*, 10 N. Y. 353.)

See, also, S. C. (11 Barb. 610), generally as to this appeal; and as to costs therein, see *Matter of Commissioners, etc., of Lewiston* (15 id. 136).

An appeal does not lie to the Court of Appeals from the judgment rendered by the Supreme Court upon

And see notes to forms, Nos. 526-528.

No. 530.

Notice of motion for appointment of referees in appeal from order of County Court changing, etc., location of toll gate on plank road or turnpike.

(Laws of N. Y. of 1890, chap. 566, § 133.)

(Title of proceeding, as in form No. 528.)

SIR:—Take notice that upon the notice of appeal to the General Term of the Supreme Court herein, with proof of due service and of filing thereof, and upon all other papers and proceedings in this proceeding, a motion will be made by the (appellant) in the said appeal, at, etc., on, etc., for an order to be made, pursuant to statute, appointing three disinterested persons who are in no wise interested in said corporation, or in the question of the location of the toll gate thereof, and are not residents of any town through or into which such road runs, or to or from which such road is a principal thoroughfare, or any adjoining town, referees to hear, try and determine the said appeal, and for such other and further relief as may be proper (with costs of this motion).¹

Dated —, 1——.

Yours, etc.,

(Signatures, etc., as in form No. 527.)

To (address as in form No. 527).

1. See section 133 of chapter 566 this notice. See, also, notes to of Laws of New York of 1890, as to forms Nos. 526–529.

No. 531.

Order of Supreme Court appointing referees on appeal from order of County Court, changing, etc., location of toll gate upon plank road or turnpike.

(Laws of N. Y. of 1890, chap. 566, § 133.)

At a General Term of the Supreme Court, held at, etc., on, etc., in and for the — judicial department.

Present — Hon. F. P., Presiding Justice; A. M. and P. J., Justices.

(Title of proceeding, as in form No. 528.)

On reading and filing (name papers read in behalf of motion), with notice of motion for the appointment of referees

upon the appeal herein, pursuant to statute [with proof of due service thereof upon E. R., attorney for the (respondent)], and on motion of F. H., counsel for said appellant (or, respondent), and after hearing E. R., for said — (or, no one appearing to oppose), and on reading (name papers read, if any, in opposition to motion):

It is hereby ordered that (*) J. K., of —, L. M., of —, and M. N., of —, be and they are hereby appointed referees, pursuant to statute, to hear, try and determine the appeal taken by, etc., in the above entitled proceeding from the order of the County Court of — county, dated —, 1—, and duly entered in the — county clerk's office, changing the location of the toll gate upon the road of said company at, etc. (or, otherwise stating the substance of order).¹

1. By the provisions of section 133 of chapter 566 of Laws of New York of 1890 (page 1158), the Supreme Court, on motion of either party, on due notice, shall appoint three disinterested persons who are not residents of any town through or into which such road shall run, or to or from which it is the principal thoroughfare, or any adjoining town, as referees to hear, try and determine the appeal. See, also, notes to forms Nos. 526-530.

No. 532.

Oath of referees appointed on appeal from order changing, etc., location of toll gate on plank road or turnpike.

(Laws of N. Y. of 1890, chap. 566, § 133.)

(Title of proceeding.)

— COUNTY, ss.:

We, J. K., L. M. and M. N., the referees appointed by order of the General Term of the Supreme Court in the above entitled proceeding, dated —, 1—, do solemnly swear that we will fairly and faithfully hear, try and determine the questions referred to us in the said proceeding, and will make a just and true report, according to the best of our understanding.¹

(Signatures of referees.)

(Jurat, as in form No. 32.)

1. See note 1 to form No. 533.

No. 533.

Report of referees appointed to hear, try and determine appeal from order changing, etc., location of toll gate on plank road or turnpike.

(Laws of N. Y. of 1890, chap. 566, § 133.)

(Title of proceeding, as in form No. 528.)

To the General Term of the Supreme Court, in the —
Judicial Department :

We, J. K., L. M. and M. N., referees duly appointed by the said court in the appeal taken to said court in the above entitled proceeding, to hear, try and determine the said appeal, do hereby respectfully report :

That having been attended by the parties and their counsel (and having taken the oath required by law, which is hereunto annexed),¹ we have proceeded to view the premises and the location of the gate affected by the order appealed from, and have heard the respective parties in the manner required by law, and do hereby respectfully find and report, as follows :

We find as matters of fact :

First. That (insert finding).

Second. That (insert finding).

And we find as conclusions of law, as follows :

First. That (insert finding).

Second. That (insert finding).

Third. That said gate should be removed from (stating place) to (stating place) in accordance with the directions of the said order appealed from (or, find against its removal; or, otherwise modifying or reversing decision below).

And we do further report that the reasons of our decision are as follows, viz.: (State same.)

And we further report that the evidence taken by us is contained in the schedule marked "D," hereto annexed and made part of this our report.

All of which is respectfully submitted.

Dated —, 1—. ²

J. K.,
L. M.,
M. N.,
Referees.

(Annex schedule "D," referred to in report.)

1. No oath, however, seems to be required to be taken by the referees, unless under the provisions of section 133 above referred to, that they "shall hear the parties in the same manner as on the trial of an issue of fact by a referee in a civil action in the Supreme Court." For form of this oath see form No. 532. which act took effect May 1, 1891, as to this report, which is to be reviewed by the court, and judgment rendered thereon, as justice and equity shall require, which shall be final and conclusive. As to compensation of referees and its payment, see same section.

2. See section 133 of chapter 566 of Laws of New York of 1890 (p. 1158), 531. See, also, notes to forms Nos. 526-

No. 534.

Order for judgment on appeal from order changing, etc., location of toll gate on plank road or turnpike.

(Laws of N. Y. of 1890, chap. 566, § 133.)

At a (General) Term of the (Supreme Court), held at —, on the — day of —, 1— (in and for the — Judicial Department).

Present — Hon. W. F. (Presiding) Justice, (and E. P. and S. R., Justices).

(Title of proceeding, as in form No. 528.)

On reading and filing the report dated —, 1—, of J. K., L. M. and M. N., referees appointed by this court, pursuant to statute, to hear, try and determine the appeal of (name of appellant), in the above entitled proceeding from the order of the County Court of — county, made and entered therein, dated —, 1—, with the evidence taken by said referees, with proof of due service of copies of said report and evidence and notice of motion for the confirmation of said report, and for judgment thereupon, upon M. R.,

the attorney for the respondents in such appeal, and after hearing F. M. for said appellants, and P. J. for said respondents, and on reading (name any papers read in opposition), it is hereby ordered

That, etc. (stating judgment rendered), and that the —, said —, recover from the —, said —, the sum of — dollars, for the costs and expenses of said appeal, including said referees' fees, and have execution therefor, and that judgment be entered accordingly.¹

1. See section 133 of chapter 566 of as to this order, and see notes to forms Laws of New York of 1890 (p. 1158), Nos. 526-533, generally, as to this which act took effect May 1, 1891, proceeding.

No. 535.

Judgment of General Term of Supreme Court on appeal from order changing, etc., location of toll gate on plank road or turnpike.

(Laws of N. Y. of 1890, chap. 566, § 133.)

(Title of proceeding, as in form No. 528.)

Judgment of the — day of —, 1—.

Upon filing the report of J. K., K. L. and L. M., referees duly appointed to hear, try and determine the appeal in the above entitled proceeding, which report bears date on the — day of —, 1—, and the order of the court dated —, 1—, directing judgment to be entered thereupon as hereinafter stated, and on motion of E. R., attorney for the appellants (or, respondent):

It is hereby adjudged as follows: That, etc. (stating judgment rendered), and that the said (appellants) [the commissioners of highways of the town of —, in the county of —, recover from and against the (respondent)], the (name of corporation), the sum of — dollars, costs of said appeal, and that said (appellants) have execution therefor.¹

J. L.,
Clerk.

1. See note 2 to form No. 535, as to the judgment to be rendered upon the report of the referees. and also section 133 of chapter 566 (p. 1158), of Laws of New York of 1890.

See, also, notes to forms Nos. 526-533, generally, as to this proceeding.

No. 536.

Order of county judge fixing security to be given on appeal from order of County Court, changing, etc., toll gate on plank road or turnpike.

(Laws of N. Y. of 1890, chap. 566, § 133.)

(Title of proceeding, as in form No. 528.)

I do hereby order and direct, on motion of D. G., attorney for (name of appellant), in the above entitled proceeding that the security to be given upon the appeal of said (naming appellant) to the Supreme Court from the order of the County Court of — county, dated —, 1—, made and entered in the above entitled proceeding, changing (etc.) the location of the toll gate on the road of said (naming company), at, etc. (or, otherwise briefly stating substance of the order), shall be an undertaking on the part of said (naming appellant), in the sum of — dollars, in the same form and duly acknowledged or proved and certified, approved and filed as required by law, and the rules of courts of record, in order to stay proceedings in the case of an appeal from a judgment or order directing the payment of money,¹ pursuant to chapter 12 of the Code of Civil Procedure (or, insert other directions as required by judge).

J. H.,

— County Judge.

1. See section 133 of chapter 566 as to this order; and as to this proceeding generally, see notes to forms 1158), which took effect May 1, 1891, Nos. 526-535.

No. 537.

Undertaking on appeal from order of County Court, changing, etc., location of toll gate on plank road or turnpike.

(Laws of N. Y. of 1890, chap. 566, § 133.)

(Title of proceeding, as in form No. 528.)

Whereas, on the — day of —, 1—, an order was made and entered, by the County Court of — county, in the above entitled proceeding (state substance of order).

And the said (naming appellant) feeling aggrieved thereby, intends to appeal therefrom to the General Term of the Supreme Court, and the county judge of — county having made an order, dated —, 1 —, that the security to be given upon such appeal shall be an undertaking by said appellant with sufficient sureties, conditioned as herein provided :

Now, therefore, we, A. M., of —, by occupation a (merchant), and M. N., of —, by occupation a (banker), do hereby, jointly and severally, undertake, that the appellant will pay all costs and damages which may be awarded against (it) on said appeal, not exceeding — dollars, and do also jointly and severally undertake that if the said order appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the sum recovered or directed to be paid by the said order, or the part thereof as to which it is affirmed (or, provide otherwise or further according to the directions of the county judge's order).¹

Dated —, 1 —.

A. M.

M. N.

In presence of

E. F.

(Certificate of acknowledgment or proof, as in form No. 89.)

(Affidavits of justification by sureties, as in form No. 220.)

I hereby approve of the foregoing undertaking as to its form and manner of execution and as to the sureties therein mentioned.

Dated —, 1 —:

R. F.,

— County Judge.

Indorsed :

SIR:

Take notice that the within (or, foregoing) is a copy of an undertaking filed in the — county clerk's office on the — day of —, 1 —.

E. N.,

Attorney for appellant.

(Office address.)

To J. B.,

Attorney for respondent.

1. The statute provides that either party may, within fifteen days there- after, appeal to the General Term of the Supreme Court, from the order

changing (etc.) the location of the Y. of 1890, chap. 566, § 133, p. toll gate, on giving such security 1158.)
 as the county judge making such See, also, notes to forms Nos. 526-
 order may prescribe. (Laws of N. 536, generally as to this proceeding

No. 538.

**Notice to toll gatherer, etc., by commissioners of highways,
 etc., to put road in good condition.**

(Laws of N. Y. of 1890, chap. 566, § 134.)

To E. F., toll gatherer at, etc. (or, person attending the gate
 at, etc.):

Take notice that you are hereby required to cause the part of the road of the (name of corporation) lying (describe situation briefly), of which written complaint has been made to the undersigned (commissioners of highways of the town of —, in the county of —), to be put in good condition within forty-eight hours from the service of this notice upon you, and that in default thereof the said (commissioners of highways) will order the toll gates upon such road to be thrown open until the said road shall be fully repaired to the satisfaction of said (commissioners).¹

Dated —, 1—.

Yours, etc.,

(Signatures of commissioners, etc.)

Commissioners, etc.

1. The commissioners of highways turnpikes in their respective towns, of the several towns, and the trustees or other officers in the incorporated cities and villages who perform the duties of commissioners of highways in such cities and villages, are to be inspectors of plank roads and cities and villages. (Laws of N. Y. of 1890, chap. 566, § 134.)
 See the same section as to their duties upon written complaint to them, or any of them, that any part of such road is out of repair.

No. 539.

Notice of appeal to County Court from order of commissioners of highways, opening toll gates upon road of plank road or turnpike corporation.

(Laws of N. Y. of 1890, chap. 566, § 134.)

— COUNTY COURT.

In the matter of the appeal
of the (name of appellant),
from the order of the com-
missioners of highways of
the town of —, in the
county of —, opening the
gates upon the road of the
(said) (name of corpora-
tion).

Take notice that the (name of appellant) hereby appeals to the County Court of — county, from the order of the commissioners of highways of the town of —, in the county of —, dated —, 1 —, ordering the toll gates upon the road of the (name of corporation), to be immediately thrown open until the road shall be fully repaired to the satisfaction of the inspector.¹

Dated —, 1 —.

A. M.,

Attorney for appellant.
(Office address.)

To the commissioners of highways of the town of —, in the county of —, and the county clerk of — county.

1. See section 134 of chapter 566 act took effect May 1, 1891, as to this of Laws of New York of 1890, which order.

No. 540.

Notice of hearing of appeal to County Court from order opening gates of plank road or turnpike company.

(Laws of N. Y. of 1890, chap. 566, § 134.)

(Title of proceeding, as in form No. 539.)

SIR: — Take notice that the appeal in the above entitled proceeding will be brought on for hearing at a term of the

County Court of — county, to be held at the —, in the (city) of —, on the — day of —, 1—, at the opening of the court (or, at — o'clock in the — noon), or as soon thereafter as counsel can be heard.¹

Dated —, 1—.

Yours, etc.

A. M.,

Attorney for (appellant).

(Office address.)

To M. H., Attorney for (respondents).

1. By section 134 of chapter 566 of Laws of New York of 1890, this appeal is to be brought to a hearing upon a notice of not less than five days, and the County Court shall always be open to hear the same.

No. 541.

Order of County Court affirming, etc., order of commissioners of highways opening gate of plank road or turnpike company.

(Laws of N. Y. of 1890, chap. 566, § 134.)

At, etc., as in form No. 528.

(Title of proceeding, as in form No. 539.)

An appeal having been taken to this court on the — day of —, 1—, from the order of the commissioners of highways of the town of —, in the county of —, made in the above entitled proceeding, dated —, 1—, directing that the toll gates upon the plank road (or, turnpike) of the (name of corporation) be immediately thrown open, until the road shall be fully repaired to the satisfaction of the inspector, and the said appeal having been duly brought to a hearing at this term of said court, and the court having heard the proofs and allegations of the parties, and after hearing M. F., of counsel for said appellant, and R. P., of counsel for said respondent, it is hereby ordered,

That the said order be and the same is hereby in all respects affirmed (or, reversed; or, modified, as follows: (stating modification), and as so modified is hereby affirmed.)¹

1. The court may, upon hearing the proofs and allegations of the parties, affirm, reverse or modify the order. If the order requires the gates to be thrown open, they shall remain open during the pendency of the appeal. (Laws of N. Y. of 1890, chap. 566, § 134, p. 1159.)

No. 542.**Order of commissioners of highways ordering toll gates of plank road or turnpike corporation to be thrown open.**

(Laws of N. Y. of 1890, chap. 566, § 134.)

At a meeting of the commissioners of highways of the town of —, in the county of —, held at — in said town, on the — day of —, 1—, all (or, two of) the said commissioners having met and deliberated on the subject matter embraced in this order (and all of the said commissioners having been duly notified to attend the said meeting for the purpose of deliberating upon the subject matter of this order):¹

It is hereby ordered and determined, by the said commissioners, (*) that the toll gates upon the plank road (or, turnpike) of the (name of corporation) be immediately thrown open, until the road shall be fully repaired to the satisfaction of the inspector.

In witness whereof, the undersigned, commissioners of highways of said town, have hereunto subscribed their names, this — day of —, 1—.²

(Signatures of commissioners.)

Commissioners.

1. Insert this clause in brackets if of Laws of New York of 1890, which but two of the commissioners meet. act took effect May 1, 1891, as to See 1 N. Y. R. S. 525, § 125. this order. See, also, note 1 to form

2. See section 134 of chapter 566 No. 541.

No. 543.**Notice of location of office of plank road or turnpike corporation.**

(Laws of N. Y. of 1890, chap. 566, § 137.)

Notice is hereby given (*) that the office of the (name of company), is located at (state place), in the (town) of —, in

the county of —, which place has been designated, pursuant to law, by the board of directors of said company as such office.¹

By order of said board of directors.

Dated —, 1—.

M. F.,
Secretary.

Or, in case of change of location, as above to (*) and from thence as follows: That the location of the office of the (name of company) has been changed by a resolution of the board of directors thereof, passed —, 1—, from its present location, to (name of place), in the (town) of —, in the county of —, and that said change to said new office will be made on the — day of —, 1—, at — o'clock in the — noon (or, at noon).

By order of said board.

Dated —, 1—.

M. F.,
Secretary.

1. See as to this designation and notice, section 137 of chapter 566 of Laws of New York of 1890 (p. 1160), which took effect May 1, 1891; the notice is to be given within two weeks after the formation of the company, and is to be published in a public newspaper of the county in which the office is located, once in each week, for three successive weeks, and a copy thereof is to be filed in the office of the county clerk of every county in which any part of such road or bridge is or is to be constructed. And if the location of such office is changed, like notice of such change is to be published and filed, in which the time of making the change shall be specified, before it shall take effect. Section 137, above mentioned, is a substitute for section 42 of chapter 210 of the Laws of New York of 1847, repealed by said chapter 566 of Laws of 1890.

No. 544.

Certificate of consolidation of two or more plank road or turnpike corporations and of change of name.

(Laws of N. Y. of 1890, chap. 566, § 138.)

The (name of corporation) a plank road (or, turnpike) corporation duly incorporated under the provisions of article 9 of chapter 566 of the Laws of New York of 1890, known as the transportation corporations law, and the (name of corporation), a turnpike (or, plank road) corporation) duly in-

corporated under the provisions of said article, do hereby certify, pursuant to section 138 of said chapter, that the said corporations have been consolidated into one corporation upon terms agreed upon by persons owning (more than) two-thirds of the stock of each of said corporations; and that the name of the road of said first mentioned corporation is the (state same) and that the name of the road of said secondly mentioned corporation is the (state same), and that the name by which the road of said corporations so consolidated shall hereafter be known shall be the (name of road.)

In witness whereof, the said corporations have caused their respective corporate seals to be hereunto affixed, and this certificate to be subscribed by their respective presidents, at the (city) of —, on this — day of —, 1—.

[L. S.]

The (name of corporation)

By A. B., its president.

[L. S.]

The (name of corporation)

By C. D., its president.

1. See section 138 of chapter 566 of Laws of New York of 1890 (p. 1160), which took effect May 1, 1891, as to contents of this certificate, which is to be filed in the office where the original certificates of incorporation were filed.

No. 545.

Consent to abandonment of the whole or part of plank road or turnpike.

(Laws of N. Y. of 1890, chap. 566, § 139.)

We, the undersigned, stockholders of the (name of corporation), a plank road (or, turnpike) corporation duly incorporated under article 9, etc. (stating as in form No. 544), owning (more than) two-thirds of the stock of said company, do hereby consent, pursuant to statute, to the abandonment by the directors of said corporation of the whole of the road of said corporation (or, of the part (or, parts) of the road of said corporation described as follows: (Describing same.)

Witness our hands this — day of —, 1—.

(Signatures of stockholders.)

1. See section 139 of chapter 566 of Laws of New York of 1890, page 566, as to this consent and its effect. The consent is to be annexed to the

declaration by directors of such abandonment (form No. 546), and filed and recorded therewith in the clerk's office of the county in which any part of the road abandoned shall be situated.

substitute for section 1 of chapter 87 of Laws of 1854, as amended by chapter 409 of Laws of 1883, both of which acts are repealed by said chapter 566 of 1890, which took effect May 1, 1891.

Section 139 above mentioned is a

See, also, note 1 to form No. 546.

No. 546.

Declaration by directors of abandonment of plank road or turnpike, in whole or in part.

(Laws of N. Y. of 1890, chap. 566, § 139.)

We, the undersigned, the board of directors of the (name of corporation) do hereby certify and declare, pursuant to law and to a resolution of said board, passed —, 1 —, the consent of stockholders of said corporation holding (more than) two-thirds of the stock thereof, having been given to the abandonment hereinafter mentioned, which consent is hereto annexed.

That we have abandoned and do hereby abandon the whole of the road of said corporation [or, the part (or, parts) of the road of said corporation described as follows, to-wit (describe same)].

In witness whereof, we have hereunto affixed our names and the seal of said company this — day of —, 1 —

M. N.,
President.
W. F.,
Secretary.
R. P., etc.,
Directors.

[L. S.]

(Acknowledgment by president and secretary, as in form No. 89.)

(Annex consent, form No. 545.)

1. See section 139 of chapter 566 of Laws of New York of 1890, page 1161, as to this declaration and annexed consent, form No. 545, and see note 1 to that form.

Where the capital stock of a plank road company has been reduced by forfeitures of stock, by the company, for the non-payment of calls, the consent of stockholders holding or

representing two-thirds of the capital as thus reduced is a sufficient compliance with the requirements of the statute, so held under chapter 87 of Laws of 1854, section 1. (People v. Fishkill, etc., Plank Road Co., 27 Barb. 445, 457.)
See, also, Heath v. Barmore (50 N. Y. 302).

No. 547.**Notice of appeal to county judge by plank road or turnpike corporation from decision of assessors.**

(Laws of N. Y. of 1890, chap. 566, § 140.)

To A. B., etc., assessors of the (town) of —, in the county of —:

Take notice that the (name of corporation) hereby appeals to the county judge of the county of — from the decision of the board of assessors of said (town), concerning the claim of said corporation to exemption from assessment and taxation, of the part of the road of said corporation lying in said (town).¹

Dated —, 1—.

Yours, etc.

A. M.,

Attorney for (name of corporation).
(Office address.)

1. See section 140 of chapter 566 took effect May 1, 1891, as to this of Laws of New York of 1890, which proceeding.

No. 548.**Notice by president or secretary of plank road or turnpike corporation to road inspector of encroachment of fence or other structure upon road.**

(Laws of N. Y. of 1890, chap. 566, § 142.)

To M. B., one of the commissioners of highways and inspectors of roads in the (town) of — in the county of —:

You are hereby notified, pursuant to law, that E. F. is erecting (or, has erected) a fence (or, name other structure) upon a part of the premises lawfully set apart for the turn-

pike (or, plank road) of the (name of corporation), to wit: that part of said road (adjoining the land of the said E. F., on the — side), the strip of said road occupied and inclosed by said fence, etc., being about — feet in length and about — feet in width.¹

Dated —, 1—.

M. N.,

President (or secretary) of the —.

1. See section 142 of chapter 566 1891, as to this notice and the proceedings thereupon. of the Laws of New York of 1890, which chapter took effect May 1,

No. 549.

Order by road inspector to remove fence or other structure from plank road or turnpike.

(Laws of N. Y. of 1890, chap. 566, § 142.)

To E. F.:

Whereas, M. N., the president (or, secretary) of the (name of corporation) has notified me, a commissioner of highways and inspector of roads in the (town) of —, in the county of —, that you are erecting (or, have erected) a fence, etc., upon a part of the premises lawfully set apart for the turnpike (or, plank road) of the said corporation, to wit: that part of said road (describing as in notice, form No. 548); And whereas, I have examined into the facts, and it appearing that said (fence) is upon a part of said road as aforesaid:

Now, therefore, you are hereby ordered and directed to remove said fence (or, name other structure) from the said road within (twenty days), so that the said road shall be open and unobstructed (or, encroached upon) thereby.¹

Dated —, 1—.

M. B.,

Commissioner of highways and inspector of roads in said town of —.

1. See section 142 of chapter 566 No. 548. Any person neglecting or of Laws of New York of 1890, as to refusing to remove such fence or this order, and see note to last form, other structure within twenty days, or

such further time, not exceeding three months, as may be fixed by the inspector, shall forfeit to the corporation the sum of five dollars for every day during which the same shall remain upon such road, but no such order shall require the removal of any fence, previously erected, between the first day of December and the first day of April.

No. 550.

Consent of board of supervisors to extension of corporate existence of plank road or turnpike corporation.

(Laws of N. Y. of 1890, chap. 566, § 151.)

At a regular (or, special) meeting of the board of supervisors of the county of —, held at the (city) of —, on the — day of —, 1—, the following resolution was adopted, viz.:

Resolved, That the consent of this board be and hereby is given to the extension for — years,¹ of the corporate existence of the (name of corporation), a plank road (or, turnpike) corporation incorporated pursuant to article 9 of chapter 566 of the Laws of New York of 1890, passed June 7, 1890, and known as the transportation corporations law (or, pursuant to an act of, etc., as in form No. 551, referring to the act of 1847).¹

I, F. P., clerk of the board of supervisors of the county of —, do hereby certify that a resolution, of which the above is a copy, was passed by said board at the meeting above mentioned.

In witness, etc. (as in form No. 30).

(Signature of clerk.)

Clerk.

[Or, affidavit, as follows:

COUNTY OF —, ss.:

I. M., of —, being duly sworn, says: That a resolution, of which the foregoing is a copy, was passed at a regular (or, special) meeting of the board of supervisors of the county of —, held at the time and place above mentioned.

(Jurat, as in form No. 32.)

I. M.]

1. See section 159 of chapter 566 of Laws of New York of 1890, which act took effect May 1, 1891, as to this consent and its proof.

No. 551.

Statement of president and treasurer to be filed with certificate of continuance of existence of plank road or turnpike company.

(Laws of N. Y. of 1890, chap. 566, § 159.)

We, the undersigned, A. F., president, and C. M., treasurer, of the (name of corporation), a plank road (or, turnpike) corporation, formed under and by virtue of article 9 of chapter 566 of the Laws of New York, passed June 7, 1890, and known as the transportation corporations law [or, of an act of the legislature of the State of New York, passed May 7, 1847, entitled "An act to provide for the incorporation of companies to construct plank roads, and of companies to construct turnpike roads," and the acts amendatory thereof], do hereby make the following statement, pursuant to section 159 of said act of 1890 (or, of article 9, etc., as above), to be filed with the certificate of the extension of the corporate existence of said corporation.

First. That the name of each town (and ward) through or into which the road of said corporation passes is as follows: The town of —, in the county of — (and so on, naming in like manner each town), and the — ward (or, wards) of the city of —, in the county of —.

Second. That the actual capital expended upon the construction of said road, exclusive of repairs, is the sum of — dollars.

[Third. That the actual cost of the part of said road remaining after the abandonment of the portion thereof abandoned by said corporation, exclusive of repairs, is the sum of — dollars.]¹

In witness whereof, etc. (as in form No. 402).²

A. F., President.

C. M., Treasurer.

— COUNTY, ss.:

A. F., of —, and C. M., of —, being severally duly sworn, depose and say, and each for himself deposes and says: That said A. F. is the president and said C. M. is the

treasurer of the (name of corporation). That the matters stated in the foregoing statement subscribed by them are true.

(Jurat, as in form No. 32.)

A. F.
C. M.

1. Insert this clause in brackets, in case any part of the road shall have been abandoned. No further abandonment of any road belonging to a corporation whose corporate existence has been so extended shall be made, except with the consent of a majority of the board of supervisors of the county in which the abandoned portion of the road may lie, which consent shall be filed in the office of the clerk of the county. (Laws of N. Y. of 1890, chap. 566, p. 1164, § 159.)

of Laws of New York of 1890, which took effect May 1, 1891.

See, also, for general provisions as to extension of time of corporate existence of domestic corporations of that State, on and after May 1, 1891, section 22 of chapter 563 of Laws of New York of 1890, as amended by section 32 of chapter 687 of Laws of New York of 1892, and form No. 422.

2. See section 159 of chapter 566

See, also, sections 161, 162 of chapter 566 above mentioned, as to construction of that act in connection with acts repealed by it.

No. 552.

Consent of stockholders of plank road or turnpike corporation, to extension of corporate existence.

(Laws of N. Y. of 1890, chap. 566, § 159.)

We, the undersigned, stockholders owning (more than) two-thirds in amount of the capital stock of the (name of corporation), a plank road (or, turnpike) corporation duly incorporated under the laws of the State of New York, do hereby consent to the extension of the corporate existence of said corporation, for — years¹ beyond the time fixed by the articles of association of said corporation for the duration of the corporate existence thereof.

In witness whereof, etc. (as in form No. 402).²

(Signatures of stockholders.)

1. A term not exceeding the term for which it was originally incorporated. (Laws of N. Y. of 1890, chap. 563, § 22, which act took effect May 1, 1891, as amended by chap.

687 of Laws of N. Y. of 1892, § 32.

2. See note 2 to last form No. 551, and statutes therein referred to, as to this consent.

TITLE V.

FORMS OF APPLICATION FOR MORTGAGE, LEASE OR SALE OF CORPORATE REAL PROPERTY, OR OF REAL PROPERTY OF JOINT STOCK ASSOCIATION.

(N. Y. Code Civ. Proc., chap. 23, tit. 2.)

- No. 553. Petition for the mortgage, lease or sale of corporate real property, or of real property of joint stock association.
554. Order of court upon petition of a corporation, etc., for leave to mortgage, sell, etc., real estate.
555. Notice of application for mortgage, sale, etc., of real estate, by corporation, etc.
556. Proof of service of notice of application to court, for leave to mortgage, etc., real estate of corporation, etc.

No. 553.**Petition for the mortgage, lease or sale of corporate property or of property of joint stock association.**

(N. Y. Code Civ. Proc., § 3391.)

To the Supreme Court of the State of New York (or the County Court of — county):

The petition of the A. B. Company respectfully shows:

First. That your petitioner is a corporation (or, joint stock association) duly incorporated (or, formed) on the — day of —, 1—, under the laws of the State of New York, pursuant to the provisions of an act of the legislature of that State, passed —, 1—, entitled “An act, etc. (giving title of act of incorporation; or, formation), and the acts amendatory thereof and supplementary thereto, for the business (or, purpose; or object) of (stating business, purpose, etc., of incorporation or association).

Second. That the name of said corporation (or, association) is the (stating same). That the names of its directors (or, trustees; or, managers) are A. B., whose place of residence is the (city) of —, in the county of —; C. D., whose place of residence is the (town) of —, in the county of — (and so on, giving the name of each director, trustee or manager, and his place of residence). That the names of the principal officers of said company (or, association) are

as follows: I. J., its president, whose place of residence is the (city) of —, in the county of —; K. L., its secretary, whose place of residence is the (town) of —, in the county of —, and so on (giving the names and official titles of the officers and their places of residence).

Third. That the interests of the said corporation (or, association) will be promoted by the sale (or, mortgage; or, lease) of the real property belonging to said corporation (or, association), a description of which by metes and bounds is hereinafter given and set forth; for the following reasons, viz: (stating same, *e. g.*, that said corporation (or, association) is indebted to various individuals (residing in the said county) to the amount of — dollars, and that it has no property with which to pay the said indebtedness, except the said real estate (which is unproductive, etc.).

Fourth. That such sale (or, mortgage; or, lease) has been authorized, by a vote of (more than) two-thirds of the directors (or, trustees; or, managers) of said corporation (or, association) at a meeting thereof, duly called and held, and that the following is a copy of the resolution granting such authority, viz.: (insert copy of resolution); [or, that a copy of the resolution granting such authority is hereto annexed, marked "A"].

Fifth. That the market value of the remaining real property of the said corporation (or, association), is the sum of — dollars; and that the cash value of its personal assets is the sum of — dollars, and that the total amount of its debts and liabilities is the sum of — dollars, which are secured as follows: (state how secured).

Sixth. That it is proposed to apply the moneys realized from such sale (or, mortgage; or, lease), as follows: (state manner).

Seventh. That the consent of the shareholders (or, stockholders; or, members), of said corporation (or, association), which consent is required by law to be first obtained to the sale (or, mortgage, or, lease) of said real property, has been given, and that a copy of such consent (or, a certified transcript of the record of the meeting at which such consent was given), is annexed to this petition, marked "B."

Eighth. That no previous application has been made for an order authorizing the sale of said real estate [or, if made, state to what court, and what order or decision was made thereon, and what new facts, if any, are claimed to be shown].¹

Wherefore, your petitioner demands leave to mortgage, lease or sell the real estate first above mentioned, of which the following is the description, viz.: All that certain lot, piece or parcel of land (with the buildings thereon), situated in the (town) of —, in the county of —, in the State of New York, and bounded and described as follows, to-wit: (insert description of property, by metes and bounds, with reasonable certainty).²

Dated —, 1—.

A. W.

(or, The A. B. Company,
by F. M., President.)

(Verification, as in form No. 323.)³

1. See rule 25 of General Rules of Practice; *Bean v. Tonelle* (24 Hun, 353); *Ludlow v. Mead* (3 N. Y. Supp. 321); S. C. (21 State Rep'r, 435); *Ross v. Wigg* (6 Civ. Proc. R. (Browne), 268, n.); *Schacne v. Kayser* (66 How. Pr. 395).

2. It is provided by section 3390 of the New York Code of Civil Procedure, that whenever any corporation or joint stock association is required by law to make application to the court for leave to mortgage, lease or sell its real estate, the proceeding therefor shall be had pursuant to the provisions of title 2 of chapter 23 of the Code of Civil Procedure.

As to the facts to be set forth in the petition, which is to be presented to the Supreme Court of the district, or the County Court of the county where the real property, or some part of it, is situated, by the corporation or association, applicant, see section 3391 of said Code.

By chapter 58 of Laws of New

York of 1861, section 1, p. 84, application must be made to the Supreme Court for the leasing or sale and conveyance of real estate belonging to any benevolent, charitable, scientific corporation, missionary society or orphan asylum.

By section 11 of chapter 60 of Laws of New York of 1813, the chancellor of the State is given the power upon the application of any religious corporation, in case he shall deem it proper, to make an order for the sale of the real estate belonging to such corporation: Provided, that that act shall not extend to any of the lands granted by the State for the support of the gospel. (2 N. Y. R. L., p. 218; R. S. [7th ed.] 1661.) By the Constitution of 1846 and the judiciary act of 1847, the powers of the chancellor were conferred on the Supreme Court. (N. Y. Const., art. 14, § 8; id., art. 6, § 6; *Wyatt v. Benson*, 16 Barb. 327; Laws of N. Y. 1847, chap. 280, § 16, repealed by chap. 417 of Laws of 1877; Code Civ. Proc.,

§ 217.) As to whether, under the acts of 1875 and 1876 (chap. 79 of Laws of 1875, and chap. 110 of Laws of 1876), and under the "rules and usages" of the Presbyterian Church of the United States, a church belonging to that denomination can sell its real estate without the precedent consent of the Presbytery, *quere*. (Matter of First Presbyterian Society of Buffalo, 116 N. Y. 251.) As to what constitutes such a consent, see same case.

The Court of Appeals has no authority to review the determination of the court below as to the propriety of such a sale. (Id.)

See, also, note 1 to form No. 554, and as to sale of property of American Congregational Union, chapter 431 of Laws of New York of 1885, § 1, p. 739;

as to sale of property of Young Men's Christian Associations, chap. 33, p. 37, of Laws of New York of 1889.

3. The petition is required to be verified in the same manner as a verified pleading in an action in a court of record. (N.Y. Code Civ. Proc., § 3391.)

See, also, section 11 of chapter 723 of Laws of New York of 1895, as amended by chapter 336 of Laws of New York of 1896, by which section 11 of chapter 60 of Laws of New York of 1813, and chapter 424 of Laws of New York of 1890 amending the same were repealed, and the leave of the court for the sale or mortgage of its real property is to be obtained by a religious corporation pursuant to provisions of Code of Civil Procedure.

No. 554.

Order of court upon petition of a corporation, etc., for leave to sell real estate.

(N. Y. Code Civ. Proc., § 3392.)

At, etc., as in forms Nos. 329, 528.

In the matter of the applica-
tion of the (name of cor-
poration) for leave to sell
real estate.

On reading and filing the petition of (The A. B. Company), a corporation (or, joint stock association), organized (or, formed), under the provisions of "An act, etc. (stating title of act), passed —, 1 —, for the business (or, object; or, purpose) of (stating same), which petition bears date —, 1 —, for leave to mortgage or lease, or sell, the real estate, described in said petition, as follows: (describe same), (*) it is hereby ordered after hearing M. C., of counsel for the petitioner, that notice of such application shall be given to R. P., who is interested therein as a member (or, stockholder; or, creditor, etc.), of the said corporation (or, association), and that said application shall be heard at the time and place specified in such notice.

[Or, as above to (*) and from thence as follows: And the court having proceeded to hear such application and it ap-

pearing upon such hearing, to the satisfaction of the court, that the interests of the said corporation (or, association) will be promoted thereby :

Now, on motion of M. C., of counsel for said petitioner, it is hereby ordered, that said A. B. Company be and it is hereby authorized to sell (or, mortgage ; or, lease) the said real property described in said petition [or, that portion of the real property described in the said petition, which is described as follows, viz.: (describing such portion)], for the sum of — dollars (per annum), upon the following terms (stating terms of sale, etc.)]

And it is further ordered that the proceeds of such sale, etc., after paying the expenses of this application and of the conveyance, etc., of said property, be disposed of by said company as follows, to-wit (state manner of disposition of proceeds).^{1]}

[Or, as above to (*) and from thence as follows : That A. M., of —, be and he is hereby appointed as referee to take the proofs concerning said sale, etc., of said real estate, and to report the same to this court, with his opinion thereon].^{2]}

1. Where it appears, from the application, that a sale is sought for the purpose of distributing the proceeds among the pewholders of a religious corporation, the court has no jurisdiction to grant the application, and its order is inoperative. (*Wheaton v. Gates*, 18 N. Y. 395.) See, also, further, as to powers of the court with regard to the application of the proceeds. *Matter of Reformed Dutch Church in Saugerties* (16 Barb. 237).

In order to constitute a valid sale of church property under chapter 60 of Laws of New York of 1813, there must be a valuable consideration enuring to the benefit of the corporation. An order of the court, founded upon a petition showing a benefit only to the individual cor-

porators, is without jurisdiction, and a deed executed in pursuance of such an order is void. (*Madison Avenue Baptist Church v. Baptist Church in Oliver Street*, 46 N. Y. 131.)

That the sale, under that act, may be made by a referee or other officer as well as by the trustees, see *De Ruyter v. St. Peter's Church* (3 N. Y. 238).

See, also, *Manning v. Moscow Presbyterian Society* (27 Barb. 52); *Lee v. Methodist E. Church of Fort Edward* (52 id. 116); *Madison Avenue Baptist Church v. Oliver Street Baptist Church* (73 N. Y. 82); *South Baptist Society of Albany v. Clapp* (18 Barb. 36); *Beach v. Allen* (7 Hun, 441); *Lynch v. Pfeiffer* (38 id. 603; aff'd, S. C., 110 N. Y. 33); *Matter of St. George's M. E. Church*

(21 N. Y. Week. Dig. 81), as to the construction of that statute.

The jurisdiction of the court, it seems, under the act of 1813, to order the sale to be made, depends upon the facts before it when the order is made, and it seems that the order cannot be sustained by proof that the facts existed which justified the order, but which did not appear to the court at the time of the application. *Wheaton v. Gates* (18 N. Y. 395).

2. See sections 3392 and 3393 of the New York Code of Civil Procedure as to the proceedings upon the presentation of the petition.

If the corporation or association is insolvent, or its property and assets are insufficient to fully liquidate its debts and liabilities, the application shall not be granted, unless all the creditors of the corporation have been served with a notice of the time and place at which the application will be heard. (§ 3394, id.)

No. 555.¹

Notice of application for sale of real estate by corporation, etc.

(N. Y. Code Civ. Proc., § 3392.)

(Title of proceeding, as in form No. 554.)

To M. B., etc.:

Take notice that upon the petition, of which a copy is herewith served upon you, an application will be made in the above entitled proceeding, at a Special Term of the Supreme Court, to be held at — in the (city) of —, on the — day of —, 1—, at the opening of the court, (or, at — o'clock in the — noon of that day), or as soon thereafter as counsel can be heard for an order granting leave to mortgage, lease or sell the real estate described in the said petition, and for such other or further relief as may be proper.¹

Yours, etc.,

M. N.,

Attorney for Petitioner,
(Office address.)

¹ See section 3392 of the New York Code of Civil Procedure, as to this notice. For proof of service thereof, see form No. 556.

No. 556.

Proof of service of notice of application to court, for leave to mortgage, etc., real estate of corporation, etc.

(N. Y. Code Civ. Proc., § 3395.)

Title of proceeding, as in form No. 554.

— COUNTY, ss.:

A. F., of —, being duly sworn, says: That on the — day of —, 1—, he served copies of the petition and notice of application to be made thereupon, hereto annexed, upon M. B., the (or, a) person to whom said notice is directed, by delivering said copies to said M. B. personally, at the (city) of —, in the county of —, and leaving the same with him [or, by leaving said copies at the residence of said A. B., Number — street, in the (city) of — (or, in the town of —, in the county of —), with R. B., a person of mature age and discretion, to-wit, of the age of at least — years, said M. B. being absent from his said residence at the time of such service; or, by mailing said copies duly enveloped and addressed to said M. B. at his residence in the city of — (or, in the town of —, in the county of —), and State of (New York), and paying the postage thereon].

That deponent is of full age, viz., of the age of twenty-one years and upwards [or, was of the age of (eighteen) years, on the — day of —, 1—, and knew the person served as aforesaid to be the (or, a) person to whom said notice is directed.¹

A. F.

(Jurat, as in form No. 32.)

1. See section 3395 of New York Code of Civil Procedure as to service of the notices provided for in title 2 of chapter 23 of that statute, relating to proceeding for the sale of corporate real property.

CHAPTER XVII.

Forms Relating to Coroners.

(N. Y. Code Crim. Proc., part 6, tit. 1.)

- No. 557. Subpœna for witness on coroner's inquest.
- 558. Attachment against witness subpœnaed by coroner for non-appearance.
- 559. Return to attachment, form No. 558.
- 560. Oath to be administered to foreman of coroner's jury.
- 561. Oath to be administered to jurors composing coroner's jury.
- 562. Oath to be administered to witness at coroner's inquest.
- 563. Oath to be administered to interpreter at coroner's inquest.
- 564. Examination of witnesses before coroner's jury.
- 565. Inquisition of coroner's inquest.
- 566. Coroner's warrant for arrest of party charged.
- 567. Undertaking by coroner when designated to act as sheriff.

No. 557.**Subpœna for witness on coroner's inquest.**

(N. Y. Code Crim. Proc., § 775.)

The People of the State of New York, to M. N.:

We command you (and each of you) that all business and excuses being laid aside, you be and appear before the subscriber, one of the coroners of the county of —, at —, in the (town) of —, forthwith (or, at — o'clock in the — noon of the — day of —, 1—), to testify and give evidence upon an inquest then and there to be had upon the body of F. E., deceased (or, of a person whose name is unknown; or, upon the examination of C. R., charged upon inquest with the murder of E. L.), and hereof fail not at your peril.

Witness my hand this — day of —, 1—.¹

L. M.,

Coroner.

1. See section 775 of New York form of this subpœna, and as to Code of Criminal Procedure, as to witnesses to be subpœnaed See, also,

People v. Collins (20 How. Pr. 111); People, *ex rel.* Cosford, v. Supervisors of Niagara County (38 N. Y. State S. C., 81 N. Y. 622); Van Hoevenbergh v. Hasbrouck (45 Barb. 197);

No. 558.

Attachment against witness subpoenaed by coroner, for non-appearance.

(N. Y. Code Crim. Proc., § 776.)

The People of the State of New York to the sheriff, or to any marshal or constable of the county of — :

We command you, that you attach M. N., and bring him before the undersigned, one of the coroners of said county, at —, in said county, forthwith, to testify upon a certain inquest, etc. (set forth as in form No. 557), and also to answer all such matters as shall be objected against him, for that he having been duly subpoenaed to attend upon such inquest, has refused and neglected to attend in conformity to such subpoena, and have you then there this writ.¹

Witness my hand this — day of —, 1—.

L. M.,

Coroner.

1. See sections 776 and 952 of New York Code of Criminal Procedure, as to this attachment.

No. 559.

Return to attachment, form No. 558.

I have arrested the within named M. N., and have him in my custody now here, as I am within commanded.¹

Dated —, 1—.

A. B.,

Sheriff, etc.

1. See note to last form, No. 558.

No. 560.

Oath to be administered to foreman of coroner's jury.

(N. Y. Code Crim. Proc., § 774.)

You do swear that you will well and truly inquire when, where and by what means the person lying here (or, whose

body you have just viewed, as the case may be) came to his death (or, was wounded), and who such person was, and into all the circumstances attending such death (or, wounding), and that you will render a true verdict thereon, according to the evidence offered to you, or arising from the inspection of the body ; so help you God.¹

1. See section 774 of New York Code of Criminal Procedure, as to the form and contents of this oath.

No. 561.

Oath to be administered to jurors composing coroner's jury.

(N. Y. Code Crim. Proc., § 774.)

The same oath which A. B., the foreman of this inquest, hath on his part taken, you and each of you do now take, and shall well and truly observe and keep on your part, so help you God.¹

1. See section 774 of New York Code of Criminal Procedure, referred to in note 1 to last form, No. 560, as to oath to jurors upon coroner's inquest.

No. 562.

Oath to be administered to witness at coroner's inquest.

The evidence which you shall give upon the inquest touching the death (or, wounding) of —, (or, of the person whose body has been viewed), shall be the truth, the whole truth and nothing but the truth, so help you God.

No. 563.

Oath to be administered to interpreter at coroner's inquest.

You shall truly interpret to the witness the oath that shall be administered to him upon this inquest ; and shall also truly interpret between the coroner, the jury (and the counsel), and the witness, so help you God.

No. 564.

Examination of witnesses before coroner's jury.

(N. Y. Code Crim. Proc., § 778.)

COUNTY OF—, ss.:

Examination of witnesses produced, sworn and examined on the — day of —, 1—, at —, in said county, before L. M., one of the coroners of the said county, and C. D., E. F., etc. (naming the jurors), good and lawful men of said county, duly summoned and sworn by the said coroner to inquire who the person was, whose body they have viewed, and when, where and by what means he came to his death (or, was wounded, as the case may be), and into the circumstances attending his death (or, wounding), and to render a true verdict thereon, according to the evidence offered to them, or arising from an inspection of the body.

F. G., being produced and duly sworn and examined, testified and says as follows (give his testimony in full):

F. G.

Subscribed and sworn before me, }
this — day of —, 1—. }

L. M.,
Coroner.

I do hereby certify that the foregoing testimony of the several witnesses appearing upon the foregoing inquest, was reduced to writing by me, and that the said testimony is the whole of the testimony taken on such inquest, and that the same is correctly stated, as given by the witnesses respectively.¹

L. M.,
Coroner.

1. By section 778 of the New York Code of Criminal Procedure, the testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner, or under his direction, and must be forthwith filed by him, with the inquisition, in the office of the clerk of

the Court of Sessions of the county, or of a city court, having power to inquire into the offense by the intervention of a grand jury.

See *People v. White* (24 Wend. 520, 532); *Matter of Ramscar* (63 How. Pr. 255); *S. C.* (10 Abb. N. C. 442; 4 N. Y. Cr. R. 126.)

No. 565.

Inquisition of coroner's inquest.

(N. Y. Code Crim. Proc., § 777.)

STATE OF NEW YORK, } ss.:
County of —, }

Inquisition taken at —, on the — day of —, 1—, before L. M., one of the coroners of said county, upon view of the body of A. B. (or, person unknown), then and there lying dead (or, wounded), upon the oath of C. D., E. F., etc. (naming each juror), good and lawful men of said county, who being duly summoned and sworn to inquire into all the circumstances attending the death (or, wounding) of the said A. B. (or, person unknown), and by whom the same was produced, and in what manner, and when, where and by what means he came to his death (or, was wounded), do say upon their oaths, aforesaid, that the deceased, A. B. (or, person unknown), came to his death from [a wound in the left lung inflicted by one I. F., with a knife (pistol shot, blow of a club, slung shot, etc.), at, etc., on, etc., which wound was given with the premeditated design of effecting the death of the deceased (or, otherwise describing manner of the death)], and so the said jurors say that the said killing of said deceased A. B. (or, person unknown), by the said I. F., was murder (or, manslaughter) in the — degree.

In witness whereof, as well the said coroner as the jurors aforesaid, have to this inquisition set their hands, on the day of the date hereof.¹

L. M.,
 Coroner.
 E. F.,
 Foreman.
 G. H., etc.,
 Jurors.

1. After inspecting the body, and hearing the testimony, the jury must render their verdict, and certify by their inquisition in writing, signed by them, and setting forth who the person killed or wounded is, and when, where, and by what means he came to his death or was wounded; and if he were killed or wounded, or his death was occasioned by the act

of another, by criminal means, who is guilty thereof, in so far as by such inquisition they have been able to ascertain. (N. Y. Code Crim. Proc., § 777.) See, also, *People v. Mondon* (103 N. Y. 211, 216); *People v. Budge* (4 Park. Crim. Rep. 519). See as to filing inquisition, section 778 of New York Code of Criminal Procedure. It has been customary to affix seals to the signatures of the coroner and jurors, but the statute does not seem to require them.

No. 566.

Coroner's warrant for arrest of party charged.

(N. Y. Code Crim. Proc., § 780.)

COUNTY OF —, ss.:

In the name of the people of the State of New York, to any sheriff, constable, marshal or policeman in this county: An inquisition having been this day found by a coroner's jury before me, stating that A. B. has come to his death by the act of C. D. by criminal means (or, as the case may be), as found by the inquisition [or, information having been this day laid before me that A. B. has been killed or dangerously wounded by C. D. by criminal means (or, as the case may be)], you are hereby commanded forthwith to arrest the above named C. D. and bring him before me, or in case of my absence or inability to act, before the nearest or most accessible coroner in this county.

Dated at the (city) of Albany (or, as the case may be), this — day of —, 1—.¹

E. F.,

Coroner of the county of —.

1. The above form of warrant is prescribed by section 781 of the New York Code of Criminal Procedure.

No. 567.

Undertaking by coroner when designated to act as sheriff.

(Laws of N. Y. of 1892, chap. 686, § 187.)

Whereas, a vacancy has occurred in the office of the sheriff of — county, and the county judge of said county has pursuant to the provisions of section 187 of article 9 of chap-

ter 686 of the Laws of New York of 1892, known as the county law, designated the undersigned A. M., a coroner of said county, to execute the duties of the office of sheriff of said county, until a sheriff thereof shall be elected (or, appointed) or qualified :

Now, therefore, we, the said A. M. and C. P., of —, and F. G., of —, do hereby jointly and severally undertake, in the sum of — dollars, that the said A. M. will, in all things, perform and execute the office of sheriff of said county during his continuance therein, without fraud or deceit.¹

Dated —, 1—.

A. M.

C. P.

In presence of

F. G.

J. R.

(Acknowledgment, as in form No. 89.)

I, M. B., county clerk of — county, do hereby pursuant to statute approve of the foregoing undertaking, as to its form and execution, and as to the sureties therein mentioned.

Dated —, 1—.

M. B.,

County clerk of — county.

(Annex examination of sureties as required by section 180 of article 9 of chapter 686 of Laws of New York of 1892.)

1. See section 186 of chapter 686 of Laws of New York of 1892, as to this undertaking.

CHAPTER XVIII.

Forms Relating to Custody of Minor Child.

(N. Y. R. S., part 2, chap. 8, tit. 2, § 1.)

No. 568. Petition for writ of *habeas corpus* by mother to obtain custody of her children.**569.** Order of the court that writ of *habeas corpus* issue to produce minor child.**No. 568.****Petition for writ of *habeas corpus* by mother to obtain custody of her children.**

(N. Y. R. S., part 2, chap. 8, tit. 2, § 1.)

To the Supreme Court of the State of New York:

The petition of M. M. respectfully shows: That she was married to J. M., on the — day of —, 1—, at —. That she lived with her said husband from the time of said marriage to the — day of —, 1—, and has since that time lived in a state of separation from him, without being divorced from him. [Here state the facts as the case may require, e. g.: That on that day her said husband left her, taking with him the (two) minor children of said marriage, viz., B. M., aged (12) years and J. M., aged (4) years, and a maid servant (M. P.), who lived with them, and most of the furniture and property in the house. That from that time she has not seen her said husband or directly heard from him. That she is informed and believes that her said husband is now living at, etc., with the said maid servant, as his wife, who has had one child by him; that her two children are living with them, and that they receive much severe and cruel treatment from the said maid servant; that they are exposed to injury from the examples of vice constantly before them. That the said children desire to return to their said

mother.] That your petitioner is exceedingly anxious to have the said children under her care and to provide for their wants, and to furnish them with support and education. That she is able so to provide for them (stating her means of support). That the said J. M. is able pecuniarily to bring the said children into court, should a writ of *habeas corpus* be issued by the court for that purpose, he being worth at least the sum of — dollars. That your petitioner is an inhabitant of the State of New York and resides at the (city) of —, in said State.

Wherefore, your petitioner prays that a writ of *habeas corpus* may be issued as provided by statute in such cases, directing that the said children may be brought into this court, and that the matters above mentioned may be examined into, and the care and custody of the said children may be awarded to her, and that your petitioner may have such other or further relief as may be proper.¹

Dated —, 1—.

M. M.

— COUNTY, ss.:

M. M., being duly sworn, says, that she is the petitioner named in the foregoing petition; that the said petition is true to her knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes it to be true.

M. M.

(Jurat, as in form No. 32.)

1. The contents of the above petition are taken substantially from *The People, ex rel. Mary Manley, v. James Manley* (2 How. Pr. 61). The court held in that case that the motion was addressed to the discretion of the court, and that a full disclosure was required of all the facts relating to the pecuniary ability of both parents before allowing the writ to bring the children into court.

See, also, *People, ex rel. Nickerson, v. —* (19 Wend. 16); *Rising v. Dodge* (2 Duer, 48); *Matter of Viele* (44 How. Pr. 14); *Matter of Welch*

(74 N. Y. 299); *People v. Chegaray* (18 Wend. 637); *People v. Humphreys* (24 id. 521); *People v. Kling* (6 Barb. 366); *People, ex rel. Allen, v. Allen* (105 N. Y. 628); 2 N. Y. R. S. 149, § 1; 7th ed. 2341.

The application should be made to the court; a judge at chambers has no power to issue the writ in such a case, since the repeal of subdivision 21 of section 16 of the judiciary act of 1847, by chapter 417 of the Laws of 1877. (*People ex rel. Hoyle v. Osborne*, 6 Civ. Pro. Rep. [Brown], 299.)

See, also, section 40 of chapter 272 of Laws of 1896.

No. 569.

Order of the court that writ of habeas corpus issue to produce minor child.

(N. Y. R. S., part 2, chap. 8, tit. 2, § 1.)

At a Special Term of the Supreme Court, held at the (city hall) in the (city) of —, on the — day of —, 1—.

Present — Hon. F. R., Justice (or, justices).

On reading and filing the petition of M. M., dated —, 1—, and on motion of C. F., counsel for M. M., it is hereby ordered: That a writ of *habeas corpus* issue under the seal of this court, in the form prescribed by statute, to F. M., commanding him to have the body (or, bodies) of B. M. (and J. M.) before the Supreme Court, at a Special (or, General) Term thereof, to be held at the city of —, on the — day of —, 1— (or, immediately after the receipt of the writ), to do and receive what shall then be considered on concerning the said J. M. (and B. M.).¹

1. See note 1 to form No. 568, and act of 1896, therein referred to.

No. 570.

Writ of habeas corpus to bring minor child before the court.

(N. Y. R. S., part 2, chap. 8, tit. 2, § 1; N. Y. Code Civ. Proc., § 2021.)

The People of the State of New York, on the relation of M. M. to J. M.:

We command you that you have the (bodies) of B. M. (and J. M.), minor (children) of J. M. and M. N., by you imprisoned and detained, as it is said, together with the time and cause of said imprisonment and detention, by whatsoever (names) the said B. M. and J. M. are called, before the Supreme Court,¹ at a Special (or, General) Term thereof, to be held at the (city) of —, on the — day of —, 1— (or, immediately after the receipt of this writ), to do and re-

ceive what shall then be considered concerning the said B. M. and J. M., and have you then there this writ.

Witness Hon. W. L. L., one of the justices of said court, at —, this — day of —, in the year 1—.²

[L. S.]

A. O.,
Justice.

C. F.,
Attorney for M. M.
(Office address).

Indorsed:

Allowed this — day of —, 1—.

A. O.,
Justice.

1. See note 1 to form No. 568, and act of 1896, therein referred to.
2. See note 1 to form No. 568, and act of 1896, therein referred to.

CHAPTER XIX.

Forms Relating to Debtor and Creditor.

- No. 571.** A letter of license from creditors to a debtor.
572. Deed of composition of debts.
573. Deed of composition with creditors; another form.

No. 571.**A letter of license from creditors to a debtor.**

To all to whom these presents shall come, we who have hereunto on this — day of —, in the year 1—, subscribed our names and affixed our seals, creditors of A. B., of, etc., send greeting :

Whereas, the said A. B., on the day of the date hereof, is indebted to us, the several creditors hereunder named, in divers sums of money, which at present he is not able to pay and satisfy without respite and time to be given him for payment thereof : Know ye, therefore, that we the said several creditors, and each and every of us, at the particular request of the said A. B. have given and granted, and by these our present letters, do give and grant unto the said A. B. full and free liberty, license, power and authority to go about, attend, follow and negotiate any affairs, business, matters or things whatsoever, to or at any place or places whatsoever, without any let, suit, trouble, arrest, attachment, or any other impediment to be offered or done, unto him the said A. B., his wares, goods, money or other effects, whatsoever, by us or any of us, or by the heirs, executors, administrators, partners or assigns, of us, or any of us, or by our or any of our means or procurement, to be sought, attempted or procured to be done, for and during — months next and immedi-

ately ensuing the day of the date hereof, and further, we the said creditors hereunto subscribed do, and each doth covenant and grant, for ourselves, our heirs, executors, administrators and assigns respectively, and not jointly, or one for another, or for the heirs, executors, administrators or assigns of each other, to and with the said A. B., that we, or any of us, our heirs, executors, administrators or assigns, or any of them, shall not, nor will, during the time aforesaid, sue, arrest, attach, or prosecute the said A. B., for, or on account of our respective debts, or any part thereof. And that if any hurt, trouble, wrong, damage or hindrance be done unto the said A. B., either in body, goods or chattels, within the aforesaid term of — next ensuing the date hereof, by us, or any of us, the said creditors, or by any person or persons, by or through the procurement or consent of us, or any of us, contrary to the true intent and meaning of these presents, then the said A. B. by virtue hereof shall be discharged and acquitted hereof, against such of us the said creditors, his and their heirs, executors, administrators or assigns, by whom and by whose will, means or procurement, he shall be arrested, attached, imprisoned, grieved or damaged, of all manner of actions, suits, dues, debts, charges, sum and sums of money, claims and demands whatsoever, from the beginning of the world to the day of the date hereof.

In witness, etc., (as in form No. 572.)¹

(Signatures and seals.)

(Acknowledgment or proof, as in form No. 6, etc.)

1. As to the consideration for this agreement : 1. A release under seal requires no proof of a consideration to support it. (*Pratt v. Crocker*, 16 Johns. 270.) The rule is the same under the New York Code of Civil Procedure, as to all sealed instruments except executory ones executed after the passage of that act, the seals upon which are only made presumptive evidence of a consideration, which may be rebutted as if the instrument was not sealed. (N. Y. Code Civ. Proc., § 840.) 2. If this be deemed an executory release, taking effect only in the contingency of a violation of the instrument, the mutual promises to forbear, etc., would form valid considerations for each other. (*Mather v. Perry*, 2 Denio, 162 ; *Williams v. Carrington*, 1 Hilt. 515.)

No. 572.

Deed of composition of debts.

To all to whom these presents shall come, we whose names and seals are hereunto subscribed and set, creditors of R. C. and C. R., of —, send greeting :

Whereas, the said R. C. and C. R. are and do stand jointly indebted unto us, the said creditors, in divers sums of money, which they are willing to satisfy and pay as far as they are able :

Now know ye, that we, the said creditors who have hereto subscribed our names, and affixed our seals, finding that the said R. C. and C. R. are by losses and otherwise, disabled to pay our full debts, do severally and respectively agree, and bind ourselves, our heirs, executors and administrators, unto the said R. C. and C. R., their executors or administrators, to receive after the rate of — cents on the dollar, in full satisfaction of all such debts and sums of money as they jointly owe to us and every of us respectively, the same to be paid in four equal payments on the days following, that is to say, the — day of —, in the year 1—, etc., so as the said R. C. and C. R., for the more sure and better payment of the several sums of money aforesaid, in recompense and satisfaction of our and every of our said several debts as aforesaid their executors or administrators, do before the — day of —, 1—, become jointly and severally bound, with sufficient sureties unto us, and every of us respectively, by obligation, in due form of law, to be made, sealed and delivered, to each and every of us, and to each and every of our use and uses, by the appointment of us and each of us.

Provided always, that neither these presents, nor anything herein contained, shall bind us, or any or either of us, who have hereunto subscribed our names and put our seals, unless all and every of the creditors aforesaid shall have sealed

and executed the same on or before the — day of — next ensuing.¹

In witness whereof, we have hereunto set our hands and seals, the day and year first above written.²

(Signatures and seals.)

In presence of

E. F.

(Acknowledgment or proof, as in forms Nos. 6, etc.)

1. Where a debtor, in the course of compromising his debts by notes made by his brother, was required to and did give to one of his creditors, his own note for the balance of the debt, as a condition of such creditor's signing the deed of composition, the other creditors being ignorant of the transaction, it was *held* that the note was illegal and void. (*Breck v. Cole*, 4 Sandf. 79.)

See, also, *Lawrence v. Clark* (36 N. Y. 128); *Higgins v. Mayer* (10 How. Pr. 363); *Irving v. Humphrey* (Hopk. 284); *Carroll v. Shields* (4 E. D. Smith, 466).

2. See as to consideration for this agreement, note 1 to last form, No. 571; *Williams v. Carrington* (1 Hilt. 515); *Hall v. Merrill* (18 How. Pr. 38).

A composition deed, though under seal, if executed by one of the partners in the firm name, is binding upon the partnership. It is but the compromise of a debt, which one partner may make under seal. (*Beach v. Allendorf*, 1 Hilt. 41.)

In the case of composition deeds, the debtor must pay at the day appointed; and if he neglects to do so, the original debt is revived. (*Peniman v. Elliott*, 27 Barb. 315.)

The acceptance by the attorney of the creditor, of a second instalment, after the creditor had refused to receive a tardy offer of the first instal-

ment, is not a waiver of the default unless it is shown that the attorney had authority to waive the default. (*Id.*)

But the subsequent act of the creditor in ratifying such payment to his attorney is a waiver. (*Id.*)

It is not necessary to the validity of such a deed that it should express the mutuality of all the signers. One in which the creditors "severally and each for himself agree with" the debtor to release and discharge his debt, on payment of a certain percentage, must be regarded as a mutual agreement among all who sign it, to relinquish a part of their respective debts to the debtor, and binding upon them all. (*Horstman v. Miller*, 35 N. Y. Super. 29.)

It is not essential that a compromise agreement should be in writing; each creditor may make a separate parol agreement for the purpose of carrying the compromise into effect, and after the agreement is once made no creditor can withdraw without the consent of the debtor. (*Chemical National Bank of N. Y. v. Kuhner*, 85 N. Y. 189.)

See, also, *Strickland v. Harger* (16 Hun, 465); *Baxter v. Bell* (19 id. 367); *Durgin v. Ireland* (14 N. Y. 322); *Viall v. Dater* (14 N. Y. Week. Dig. 572); *Bacon v. Claffin* (21 id. 200); *Almon v. Hamilton* (100 N. Y. 527);

Coon v. Stoker (2 N. Y. State Rep'r, 626); Continental National Bank of N. Y. v. Koehler (4 id. 482); White v. Kuntz (107 N. Y. 518; S. C., 1 Am. St. Rep. 886); Zoebisch v. Von Min-den (120 N. Y. 406, rev'g S. S., 47 Hun, 213); Van Brunt v. Van Brunt (3 Edw. 14); Lysaght v. Phillips (5 Duer, 106); Hanover Nat. Bank v. Blake (142 N. Y. 404), among other cases relating to such compromises.

No. 573.

Deed of composition with creditors. Another form.

We, the undersigned creditors of P. C., have respectively received from him and hereby accept the promissory notes of B. C., payable at two, six, nine, and twelve months from the — day of — last, for the sum of — cents on the dollar of the amount of our respective debts against said P. C., on compromise thereof, in full release and discharge of our said debts respectively.

Witness our hands and seals this — day of —, 1—.¹
(Signatures and seals.)

In presence of
E. F.

(Acknowledgment or proof, as in forms Nos. 6, etc.)

1. This form is from the case of Breck v. Cole (4 Sandf. 79). See, also, notes to last form, No. 575.

Declaration of Trust.

See Deeds.

CHAPTER XX.

Forms of Deeds.

TITLE I.

GENERAL FORMS.

- No. 574.** Conveyance of real estate, containing covenants of further assurance, of quiet enjoyment, against grantor, against incumbrances, of seizin, of right to convey, and of general and special warranty, commonly called a full covenant deed.
575. Full covenant deed, containing same covenants as in last form; shorter form.
576. Condensed form of covenants of seizin, against incumbrances and of warranty, in deed.
577. Sheriff's certificate on a sale of real estate.
578. Assignment of sheriff's certificate of sale, under execution, form No. 577.
579. Sheriff's deed on sale under execution.
580. Sheriff's or referee's deed in action for foreclosure of mortgage of real property.
581. Deed with covenants, against grantor only.
582. Deed of partition between heirs at law.
583. Same between tenants in common or joint tenants.
584. Deed under chapter 475 of Laws of New York of 1890, § 6, containing full covenants.
585. Executor's deed.
586. Declaration of trust.
587. Same, where land is purchased by two or more, for the benefit of themselves and others.
588. A grant of annuity by deed.
589. Deed of gift of lands.
590. Same by a father to his son, of personal property, the son to pay his father's debts, and allow him an annual sum, with clause of re-entry on default, etc.
591. Release of dower by widow indorsed on deed.
592. Sheriff's or referee's deed in action for partition of real property.
593. Deed by special guardian of infant's property, under order of the court.
594. Release by widow of her right of dower in property by form No. 593.
595. Deed by committee of lunatic of lunatic's property.
596. Deed on sale of property of decedent for payment of debts, etc.

No. 574.

Conveyance of real estate containing covenants of further assurance, of quiet enjoyment, against grantor, against incumbrances, of seisin, of right to convey, and of general and special warranty, commonly called a full covenant deed.

This indenture, made this — day of —, in the year 1—, between [or, Know all men by these presents, that I (or, we), as in form No. 575],¹ A. B., of the (city) of —, in the county of —, and State of — (and M. B., his wife), and C. D., of, etc. (and E. D., his wife), [or, the (name of corporation), a — corporation duly organized under the laws of the State of —, located and doing business at the (city) of —, in the county of — in said State] party (or, parties) of the first part, and G. H., of the (city) of —, in the county of —, and (State) of —, and E. F. of, etc., party (or, parties) of the second part, witnesseth :

That the said party (or, parties) of the first part for and in consideration of the sum of — dollars to him (or, them) in hand duly paid by the said party (or, parties) of the second part, the receipt whereof is hereby confessed and acknowledged, has (or, have) bargained and sold, and by these presents does (or, do) grant and convey unto the said party (or, parties) of the second part [and to his (or, their) heirs and assigns forever],² all that certain lot, piece or parcel (or, all those certain lots, pieces or parcels) of land, situated, lying and being in the (said city) of —, and bounded and described as follows, to-wit : (here insert description of premises conveyed), with the appurtenances and all the estate, title and interest therein of the said party (or, parties) of the first part [to have and to hold for and during (the natural life of said C. D.; or, name other term less than a fee)]³ [subject, however, to (here insert any incumbrance, etc., subject to which the premises are sold), which said (mortgage, etc.), the party of the second part hereby assumes and agrees to pay as a part of the consideration hereof]. (*)

[And the said (A. B. and C. D.), party (or, parties) of the first part, does (or, do) hereby (jointly and severally) covenant and agree to and with the said party (or, parties) of the second part, his (or, their) heirs and assigns (†) that he, the said A. B. (or, they, the said A. B. and C. D.) and all and every other person



or persons lawfully claiming or to claim by, from, or under him or them shall and will, from time to time, and at all times hereafter, upon the reasonable request, and at the cost and charge of the said party of the second part, his heirs and assigns, make and execute, or cause or procure to be made and executed, all and every such further and other lawful and reasonable deed whatsoever, for the further, better, more perfect and absolute assurance and confirmation of the said above granted and described premises, with their appurtenances, unto the said party of the second part, his heirs and assigns as by him or them, or by his or their counsel learned in the law, shall be reasonably advised, devised or required.)⁴

(And the said A. B. (and C. D.) (further) covenants (or, covenant) to and with the said E. F., his heirs and assigns, that he, the said E. F., his heirs and assigns, shall and lawfully may, from time to time, and at all times hereafter, peaceably and quietly have, occupy, possess and enjoy, the said premises hereby granted and conveyed, or intended so to be, with the appurtenances (subject as aforesaid), without the lawful hindrance or molestation of the said A. B. (and C. D.) his (or, their) heirs or assigns, or of any other person or persons whomsoever, by or with his (or, their) act, consent, privity, or procurement.)⁵

(And the said A. B. (and C. D.) for himself (or, themselves), his (or, their) heirs, executors and administrators does (or, do (*)) severally and not jointly, nor the one for the other, or for the act or deed of the other, but each for his own acts only), (further) covenant, promise, grant and agree, to and with the said E. F., his heirs and assigns, by these presents, that he (or, they, the said A. B. and C. D., has (or, have) not heretofore done or committed or wittingly or willingly suffered to be done or committed, any act, matter or thing whatever, whereby the said premises hereby granted, or any part thereof (except as aforesaid), are or shall be charged or incumbered, in title, estate or otherwise), (or, from (*)) as follows: that the said premises are free and clear of all incumbrances of every nature.)⁶

(And the said A. B. (and C. D.) (further) covenants (or, covenant) to and with the said E. F., his heirs and assigns,

that at the time of the ensealing and delivery of these presents, he is (or, they are) the lawful owner (or, owners), and well seized of the premises above conveyed,⁷ and that he has (or, they have) good right and lawful authority to sell and convey the same, and that the said premises thus conveyed, in the quiet and peaceable possession of the said E. F., his heirs and assigns, he (or, they) will forever warrant and defend (subject as above) against any person whomsoever lawfully claiming the same, or any part thereof (or, against the lawful claims and demands of all persons claiming by, through or under the said A. B. (and C. D.), but against none other.))⁸

[And for the consideration aforesaid, the said C. B., wife of the said A. B. (or, A. B., husband of the said C. B.), etc., hereby releases unto the said party of the second part, and his heirs and assigns, all right, of and to both dower and homestead (or, all estate by the courtesy) in the above granted premises.]⁹

In witness whereof, the said party (or, parties) of the first part, has (or, have) hereunto set his (or, their) hand and seal (or, hands and seals), (or, has caused this instrument to be signed by E. M., its (president), and its seal to be hereto affixed)¹⁰ the day and year first above written (or, on this — day of —, 1—).

(Seal of corporation.)

A. B. [L. S.]¹¹

C. D. [L. S.]

(or, The (name of corporation), by E. M., its president.)

Sealed and delivered in presence of

J. K.

(Acknowledgment or proof by grantors, as in form No. 6, etc.)

1. Where a conveyance of real estate, purporting to be an indenture and containing a clause by which the grantee assumes and agrees to pay a mortgage upon the lands conveyed, has been accepted by the grantee, it will, for the purpose of a remedy against the grantee, be considered as the deed of both parties, and the clause as a covenant. (*Bowen v. Beck*, 94 N. Y. 86.)

It seems, the grantee, in a conveyance by deed-poll containing a mortgage assumption clause, upon acceptance of the deed, becomes bound as covenantor to pay the mortgage. (*Id.*, p. 89, citing *Atlantic Dock Co. v. Leavitt*, 54 N. Y. 35; S. C., 13 Am. Rep. 556.)

Where the deed, in form, begins as an indenture, but purports to be and is, in fact, the deed of and executed

only by the grantor, it has the quality merely of a deed-poll. (*Champlain & St. Lawrence Railroad Co. v. Valentine*, 19 Barb. 484.)

Recitals in such a deed are evidence against the grantee, but work no estoppel. (*Id.*)

And see, further, as to binding effect of covenants on the part of the grantee, contained in a deed-poll, *Aikin v. Albany, Vermont & Canada Railroad Co.* (26 Barb. 289, 299).

2. Omit the words in brackets, if the conveyance is less than of a fee.

3. Insert this clause where the conveyance is of less than a fee.

4. The covenant of further assurance, as it is called, is much used in English conveyances, but not commonly in American ones. (*Gwynn v. Thomas*, 2 Gill & J. 420; *Nelson v. Harwood*, 3 Call. 394.) It is a covenant that runs with the land, and as a consequence is assigned by a conveyance of the land. (*Colby v. Osgood*, 29 Barb. 339.) No action can be brought upon it until a deed has been first presented to the party whose execution of it is desired, and a demand made for its execution. (*Miller v. Parsons*, 9 Johns. 336.)

See, further, as to the construction and effect of this covenant, *Warn v. Bickford* (7 Price, 550; 9 id. 43); *King v. Jones* (5 Taunt. 418); *Innes v. Jackson* (16 Ves. 366); *Colby v. Osgood* (*supra*); *Davenport v. Lamb* (13 Wall. 418).

5. See as to the nature and effect of this covenant, called the covenant of quiet enjoyment, *Fowler v. Poling* (6 Barb. 170); *Connor v. Bernheimer* (6 Daly, 295); *Rea v. Minkler* (5 Lans. 199); *Whitbeck v. Cook* (15 Johns. 483; S. C., 8 Am. Dec. 272); *Greenvault v. Davis* (4 Hill, 645); *Cowdrey v. Coit* (44 N. Y. 382; S. C.,

4 Am. Rep. 690); *Home Ins. Co. v. Sherman* (46 N. Y. 370); *Adams v. Conover* (22 Hun, 424; aff'd, S. C., 87 N. Y. 422); *Shattuck v. Lamb* (65 id. 499; S. C., 22 Am. Rep. 690); *Stone v. Hooker* (9 Cow. 157); *Sedgwick v. Hollenbeck* (7 Johns. 376); *Doupe v. Genin* (37 How. Pr. 5; S. C., 1 Sweeny, 25); *Mayor, etc., v. Mabie* (13 N. Y. 156); *Kelley v. Dutch Church* (2 Hill, 165); *Scriver v. Smith* (100 N. Y. 471, aff'g S. C., 30 Hun, 129); *Mead v. Stackpole* (40 Hun, 473); *Green v. Collins* (86 N. Y. 346, rev'g S. C., 20 Hun, 474); *Bridge v. Pierson* (66 Barb. 514).

In the case of a breach of this covenant the measure of damages generally adopted is the consideration money with interest and costs. *Staats v. Ten Eyck* (3 Caines, 111); *Mack v. Patchin* (42 N. Y. 167; S. C., 1 Am. Rep. 506); *McGary v. Hastings* (39 Cal. 360; S. C., 2 Am. Rep. 456).

6. As to the effect of this covenant, called the covenant against incumbrances, and as to what are to be deemed incumbrances, see *Roberts v. Levy* (3 Abb. Pr. [N. S.] 311); *Floyd v. Clark* (7 Abb. N. C. 136); *Walter v. Walter* (3 id. 12); *Pease v. Christ* (31 N. Y. 141); *Dowdney v. Mayor, etc.* (54 id. 186); *Ramsey v. Wandell* (32 Hun, 482); *Andrews v. Appel* (22 id. 429); *Harper v. Dowdney* (47 id. 227); *DePeyster v. Murphy* (66 N. Y. 622, rev'g S. C., 39 Super. Ct. 255); *Reading v. Gray* (37 Super. Ct. 79); *Barlow v. St. Nicholas Hotel Co.* (63 N. Y. 399; S. C., 20 Am. Rep. 547); *Anonymous* (2 Abb. N. C. 56); *Farley v. Farrell* (51 How. 497); *Mohr v. Parmelee* (43 Super. Ct. 320); *Merrill v. Clark* (20 Week. Dig. 204); *Huyck v. Andrews* (39 Alb. L. Jour. 370); *Docter v. Darling* (68 Hun, 70); *Ass'n for Colored Orphans v. Mayor, etc., of New York* (104 N. Y. 581), among other cases.

The form of covenant against in-

cumbrances, first given above, is called the covenant against the grantor, and the one secondly given is a covenant generally against all incumbrances.

It is broken at the instant it is made, if at all, and is held by some authorities, therefore, not to run with the land, and the right of action for a breach of it not to pass to the assignee of the covenant. (*Bethell v. Bethell*, 54 Ind. 428; S. C., 23 Am. Rep. 650; *Richard v. Bent*, 59 Ill. 38; S. C., 14 Am. Rep. 1; *Fuller v. Gillett*, 2 Fed. Rep. 30; 9 Biss. 296; 9 Repr. 367.) In Vermont, however, it is held that this covenant runs with the land. (*Cole v. Kimball*, 52 Vt. 639.) And in *Roberts v. Levy* (3 Abb. Pr. [N. S.] 311), it is said that "the transfer of the land, the principal thing, should be held to imply in equity an assignment of all remedies under the covenant. That the broken covenant does not run with the land, and pass to the assignee, but that the action may be brought in the name of the covenantees for the benefit of the grantee, raises only a technical scruple which is disposed of by the Code of Procedure (§ 111; Code Civ. Proc., § 1909), which enacts that all actions must be brought in the name of the real party in interest." See, also, *Andrews v. Appel* (22 Hun, 429), and the cases cited on page 433, *id.*; *Coleman v. Bresnahan* (54 Hun, 619); but see *Mygatt v. Coe* (124 N. Y. 212, 218, *rev'g* S. C., 44 Hun, 31).

For a breach of the covenant against incumbrances, only the amount actually paid to relieve the premises therefrom can be recovered, and in no event can the recovery exceed the amount of the consideration for which the deed was given. (*Andrews v. Appel*, *supra*.)

7. The covenant of seizin is broken, if at all, at the time of the conveyance, and cannot, therefore, be taken advantage of by an heir, or an assignee, and the same rule applies to the covenant for right to convey. (*Hamilton v. Wilson*, 4 Johns. 72; *Dusenbury v. Callaghan*, 8 Hun, 541; *Chapman v. Holmes*, 5 Halst. 20; *Mott v. Palmer*, 1 N. Y. 564; *Bingham v. Weiderwax*, 1 N. Y. 509; *Swazey v. Brooks*, 30 Vt. 692; *Mygatt v. Coe*, 124 *id.* 212, *rev'g* S. C., 44 Hun, 31.)

The covenants of seizin and of the right to convey are said by some authorities to be synonymous, and to have the same legal effect. (*Rickert v. Snyder*, 9 Wend. 421; *Raymond v. Raymond*, 10 Cush. 140; *Marston v. Hobbs*, 2 Mass. 437; *Brandt v. Foster*, 5 Iowa, 294); but see *Richardson v. Dorr* (5 Vt. 21).

The measure of damages for breach of either of these covenants is the consideration money and interest. (*Stubbs v. Page*, 2 Me. 278; *Leland v. Stone*, 10 Mass. 449; *Mitchell v. Hazen*, 4 Conn. 495; *Dale v. Shively*, 8 Kans. 276; *Nutting v. Herbert*, 35 N. H. 120; *Lacey v. Marnan*, 37 Ind. 168; *Phipps v. Tarpley*, 31 Mo. 433; *Coe v. Strode*, 2 Bibb, 279; *Blake v. Burnham*, 29 Vt. 437; *Park v. Check*, 4 Cold. 20.)

8. By the covenant of general warranty, the grantor undertakes that on failure of the title purported to be conveyed by the deed, either for the whole estate or for a part only, he will make compensation in money for the loss sustained by such failure. (*King v. Kerr*, 5 Ohio, 154; S. C., 22 Am. Rep. 777; *Mitchell v. Warner*, 5 Conn. 517.) The measure of damages for a breach of that covenant is, generally speaking, the amount of the consideration money and interest

for not exceeding six years, and costs of the suit brought for eviction, including reasonable fees of counsel as well as those which are taxable. (*Staats v. Ten Eyck*, 3 Caines, 111; S. C., 2 Am. Dec. 254; *Mack v. Patchin*, 42 N. Y. 167; S. C., 1 Am. Rep. 506; *McGary v. Hastings*, 39 Cal. 360; S. C., 2 Am. Rep. 456; *Foster v. Thompson*, 31 N. H. 379; *Wade v. Comstock*, 11 Ohio St. 82; *Dickson v. Desire*, 23 Mo. 166; *Crisfield v. Storr*, 36 Md. 150.) Upon a partial eviction the plaintiff is entitled to recover such proportion of the amount which he would have been entitled to recover upon the failure of title to, or eviction from possession of the whole tract conveyed, as the value of that portion of the property as to which the title failed, bore to the value of the whole of it. (*Adams v. Conover*, 22 Hun, 424; aff'd, S. C., 87 N. Y. 422.) In some of the States it has been held that damages for breach of the covenant should be ascertained by the value of the land at the time of the eviction. (*Horsford v. Wright*, *Kirby*, 3; S. C., 1 Am. Dec. 8; *Smith v. Sprague*, 40 Vt. 43; *Hardy v. Nelson*, 27 Me. 525; *Wyman v. Ballard*, 12 Mass. 304; *Coleman v. Ballard*, 13 La. Ann. 512; *Smith v. Strong*, 14 Pick. 128.) In *Staats v. Ten Eyck*, *supra*, the case of *Horsford v. Wright*, *supra*, is considered, and this doctrine disapproved.

Mesne profits recovered by the grantee should be deducted from the interest. (*Combs v. Tarlton*, 2 Dana, 467; *Young v. Devine*, 12 N. Y. Week. Dig. 18; *Foster v. Thompson*, 41 N. H. 373; *Burton v. Reeds*, 20 Ind. 91.) See, also, *Winslow v. McCall* (32 Barb. 241).

See, further, as to the nature and effect of a general covenant of war-

ranty, *Day v. Chism* (10 Wheat. 452; *Greenvault v. Davis* (4 Hill, 645); *Shattuck v. Lamb* (65 N. Y. 499; S. C., 22 Am. Rep. 690); *Scriver v. Smith* (100 N. Y. 471, aff'g S. C., 30 Hun, 129); *Blydenburgh v. Cotheal* (1 Duer, 176), and the cases cited in note to *Horsford v. Wright* (1 Am. Dec. 8).

A covenant of warranty, and of quiet enjoyment, or against incumbrances in a deed is not broken by a mere trespass, not amounting to an eviction, committed without claim of right on the part of the trespasser. (*Horton v. Bauer*, 129 N. Y. 148.)

9. The words in brackets are necessary under the Massachusetts statute to bar the wife's right of dower, or the husband's estate by the courtesy and the wife's right of homestead in property conveyed. (P. S., chap. 124, § 6; 11 Gray, 332.)

10. Where the common seal of a corporation appears to be affixed to an instrument, and the signature theret of the proper officer is proved, the seal is *prima facie* evidence that it was affixed by proper authority. (*Trustees Canandaigua Academy v. McKechnie*, 90 N. Y. 619.)

11. In regard to sealing it may be said in general, that a deed with an impression of a seal for each grantor, opposite his or her signature, will comply with the requirements of law in every State and Territory of the United States. In some of them no seal is required; in others a scroll answers the purpose of a seal, except in the case of a corporation which must always execute under seal.

See, also, *Town of Solon v. Williamsburgh Savings Bank* (39 Alb. L. Jour. 471, N. Y. Court of Appeals, 1889; S. C., 114 N. Y. 122), and § 13 of ch. 677 of Laws of 1892, as to what constitutes a seal in New York State. See, also, notes to form No. 808, and as to effect of inadequacy of consideration, see *Wilmerding v. Jarmulowski* (85 Hun, 285), and cases there cited.

No. 575.

**Full covenant deed, containing covenants same as last form.
Shorter form.**

Know all men by these presents:¹ That we, J. D. and M. D., his wife, of the (town) of —, in the county of —, and State of (New York), for and in consideration of the sum of — dollars, to us in hand paid, have granted, bargained, sold, and by these presents do grant, bargain, sell and convey, unto J. S., of (the same place), all that certain piece or parcel of land, situate in the (said town) of —, and described as follows (or, which, in a deed of conveyance made by R. F. to the said J. D., dated the — day of —, in the year 1—, was described as follows): All, etc. (here insert description), with the appurtenances, and all the right, title, interest, claim and demand of us, or either of us, in the premises; to have and to hold the same, with the appurtenances, unto the said J. S. and his heirs (in fee simple, forever).² And I, the said J. D., for myself and my heirs, do hereby covenant and agree, to and with the said J. S., and his heirs and assigns, that I am now the owner of the said premises, and am seized of a good and indefeasible estate of inheritance therein,³ and that I have full right and power to sell and convey the same, in fee simple absolute;⁴ that the said premises are free and clear of all incumbrances;⁵ that the said J. S., his heirs and assigns, may forever hereafter have, hold, possess and enjoy the same, without any suit, molestation or interruption, by any person whomsoever, lawfully claiming any right therein;⁶ and that I, the said J. D., and all persons hereafter claiming under me, will, at any time hereafter, at the request and expense of the said J. S., his heirs or assigns, make all such further assurances, for the more effectual conveying of the said premises, with the appurtenances, as may be reasonably required, by him or them;⁷ and that I, the said J. D., and my heirs, will warrant

and defend the said premises, with the appurtenances, unto the said J. S. (his heirs and assigns), forever.⁸

In testimony whereof, we have hereto set our hands and seals, this — day of —, in the year 1—.

J. D. [L. S.]⁹

Sealed and delivered in presence of M. D. [L. S.]

E. P.

(Acknowledgment or proof, as in forms Nos. 6, etc.)

1. See note 1 to last form, No. 574, as to deeds-poll and indentures.

2. See note 2 to last form, No. 574, and the clause to which that note applies. For subject clause, see same form.

3. See note 7 to last form, No. 574. 574.

4. See note 7 to last form, No. 574.

5. See note 6 to last form, No. 574.

6. See note 5 to last form, No. 574.

7. See note 4 to last form, No. 574.

8. See note 8 to last form, No. 574.

9. See note 11 to last form, No.

No. 576.

Condensed form of covenants of seizin, against incumbrances and warranty, in deed.

As in form No. 574, to (†) and from thence as follows:

That at the time of the ensealing and delivery of these presents, he is (or, they are) the lawful owner (or, owners) and well seized of the premises above conveyed free and clear from all incumbrances, of every name and nature, legal or equitable, and that the premises thus conveyed, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, he (or, they) will forever warrant and defend, against any person whomsoever lawfully claiming the same, or any part thereof.

In witness, etc. (as in last above form to end).

Sealed, etc. (as above).¹ (Signatures and seals as above.)

(Acknowledgment or proof, as in forms Nos. 6, etc.)

1. See notes to form No. 574, as to nature and effect of these covenants.

No. 577.

Sheriff's certificate on a sale of real estate.

(N. Y. Code Civ. Proc., § 1438.)

(Title of cause.)

I, M. N., sheriff of the county of —, do certify, that by virtue of an execution in the above entitled action, to me

issued and delivered, by which I was commanded to satisfy a judgment rendered in the above entitled action, in favor of the said A. B. and against the said C. D., on the — day of —, 1—, for — dollars and — cents, and upon which was actually due the sum of — dollars and — cents, with interest thereupon from the — day of —, 1—, out of the personal property of the said C. D., and if sufficient personal property could not be found, then out of the real property in the said county of — belonging to the said C. D., on the — day of —, 1—, the day on which the said judgment was docketed in the said county, or at any time thereafter, I have this day sold at public auction, according to the statute in such case made and provided, having previously given public notice of the time and place of sale of the same, according to law, (*) to G. H., who was the highest bidder, for the sum of — dollars, which was paid by him therefor, and was the whole consideration money paid, all the right, title and interest of the said C. D., on the — day of —, 1—, or at any time thereafter, of, in and to the real estate described in the annexed notice [or, in and to the real estate described as follows (insert description)].

Given under my hand, the — day of —, 1—.¹

M. N.,

Sheriff of the county of —.

(Acknowledgment, as in form No. 89.)

If the sale was made in parcels, proceed as in above form to the (*), and from thence as follows: All the right, title and interest of the said C. D., on the — day of —, 1—, or at any time thereafter, of, in and to the real estate described in the annexed notice [or, in and to the real estate described as follows (insert description)], the whole consideration paid therefor being the sum of — dollars.

That said sale was made in parcels as follows: The parcel described as follows (insert description) to E. F., the price bid by him therefor being the sum of — dollars.

The parcel described, etc., to G. H., the price, etc. (and so on in regard to each parcel sold).

Given, etc. (as above to end).²

(Signature as above.)

1. A failure of the sheriff to deliver the certificate does not authorize an order vacating the sale. (O'Brien v. Hashagen, 20 Hun, 564.)

2. Section 1438 of the New York Code of Civil Procedure, under which this form is prepared, provides as follows :

§ 1438. The sheriff, who sells real property, by virtue of an execution, must make out, subscribe, and acknowledge before an officer authorized to take the acknowledgment of a deed, duplicate certificates of the sale, containing :

1. The name of each purchaser, and the time when the sale was made.

2. A particular description of the property sold.

3. The price bid for each distinct parcel separately sold.

4. The whole consideration money paid.

Section 1439, id., further provides as follows:

§ 1439. The sheriff must, within ten days after the sale, file one of the duplicate certificates, in the office of the clerk of the county, and deliver another to the purchaser. If there are two or more purchasers, a certificate must be delivered to each. The clerk must immediately record the certificate in a book, kept by him for that purpose, and must index the record, to the name of the judgment debtor. His fees for so doing must be paid by the sheriff, as part of the expenses of the sale.

See O'Brien v. Hashagen, cited in note 1 to this form.

No. 578.

Assignment of sheriff's certificate of sale under execution, form No. 577.

(N. Y. Code Civ. Proc., § 1474.)

Know all men by these presents, that I, A. B., of, etc., named and described in the within (or, annexed) certificate, in consideration of the sum of — dollars, to me in hand paid by C. D., of, etc., have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer and set over to the said C. D., the within (or, annexed) certificate, together with all the right, title, claim or interest, which I have, or can have therein, or to the land therein described by virtue thereof.

In witness whereof, I, etc. (as in form No. 30).¹

A. B. [L. S.]

Sealed and delivered in the presence of

E. F.

(Certificate of acknowledgment or proof, as in form No. 89.)

1. Section 1474 of the New York Code of Civil Procedure, under which the above form is prepared, provides as follows:

§ 1474. Before an assignee, or his executor or administrator, is entitled to a deed, as prescribed in the last two sections, each assignment, under which the deed is claimed, must be acknowledged or proved, and certified, in like manner as a deed to be recorded in the county where the property is situated, and must be filed in the office of the clerk of that county.

No. 579.

Sheriff's deed on sale under execution.

(N. Y. Code Civ. Proc., § 1471.)

This indenture, made this — day of —, 1—, between M. N., sheriff [or, late sheriff] of the county of —, of the first part, and I. J., of —, of the second part.¹

Whereas, by virtue of a certain execution directed and delivered to the said sheriff, commanding him to satisfy a judgment rendered by the Supreme Court in the action, in the said writ mentioned, in favor of A. B. and against C. D., on the — day of —, 1—, out of the personal property of the said C. D., and if sufficient personal property could not be found then out of the real property in the said county of — belonging to the said C. D., on the — day of —, 1—, the day on which the said judgment was docketed in the said county, or at any time thereafter, the said [late] sheriff did, in obedience to the command of said execution, levy on and seize all the estate, right, title and interest which the said C. D. so had, of, in and to the premises hereinafter described, and on the — day of —, 1—, sold the said premises at public auction at —, in the city [or, town] of — —, in the county of —, having previously given due public notice of the time and place of such sale according to law [by causing a notice thereof to be published in a newspaper published in said county once in each of the six weeks immediately preceding said sale, and by conspicuously fastening up, at least forty-two days before the said day, in three public places in the said town [or, city] where the said sale was to take place, and also in three public places in the town [or, city] where said property is situated, a printed notice thereof;]² and whereas, at such sale, the said premises

were struck off to said I. J. [or, to E. F.] for the sum of — dollars, he being the highest bidder therefor, and that being the highest sum bidden for the same; (and whereas the sheriff's certificate of said sale has been duly assigned by said E. F. to the said I. J., together with all rights arising thereunder by assignment duly acknowledged and certified and filed with the county clerk of — county on the — day of — 1—); and whereas, the said premises, after the expiration of fifteen months from the time of said sale, remained unredeemed [or, and whereas, the said premises, after the expiration of one year from the time of said sale, remained unredeemed by any person entitled to make such redemption within that time; and whereas, the said I. J., a creditor of the said C. D., having in his own name (or, as assignee, or, as executor, etc.) a judgment against the said C. D., rendered before the expiration of fifteen months from the time of said sale (or, having a mortgage duly recorded), which was a lien upon the said premises sold, has redeemed the said premises within the time and in the manner and form prescribed by the statute in such case made and provided, and more than twenty-four hours having elapsed since the time of the said redemption, and no other creditor of the said C. D. has redeemed from the said I. J.]:

Now, this indenture witnesseth, that the said party of the first part, by virtue of the said writ and in pursuance of the statute in such case made and provided, and in consideration of the sum of money so bidden, as aforesaid, to him duly paid, hath sold, and by these presents doth grant and convey, unto the said party of the second part, all the estate, right, title and interest which the said C. D. had on the — day of —, 1—, or at any time thereafter, of, in and to all [describing premises sold]:

To have and to hold the said above mentioned and described premises unto the said party of the second part, his heirs and assigns, forever, as fully and as absolutely as the said party of the first part as [late sheriff], as aforesaid, can convey by virtue of the said writ and the laws relating thereto.

In witness whereof, the said [late sheriff] has set his hand and seal hereto, the day and year first above written.¹

| | | |
|------------------------------|---|---------------------|
| | | M. N. [L.S.] |
| Signed, sealed and delivered | } | [late] sheriff. |
| in the presence of | | [By A. H., Deputy.] |
| M. N | | |

(Certificate of acknowledgment or proof, as in form No. 89.)

1. See sections 1472, 1473, 1474 of the New York Code of Civil Procedure, as to whom the deed is to be executed to.

Section 1471 of that Code under which this form is prepared, as amended by chapter 637, p. 915 of Laws of 1886, provides as follows:

§ 1471. Immediately after the expiration of fifteen months from the time of sale, except where a redemption has been made on the last day of the fifteen months, and, in that case, immediately after the expiration of twenty-four hours from the last redemption, the sheriff who made the sale must execute the proper deed or deeds, in order to convey to the person or persons entitled thereto, the part or parts of the property sold, which have not been redeemed by the judgment debtor, his heir, devisee or assignee. The deed conveys to the grantee therein the right, title and interest which was sold by the sheriff.

After the same shall have been recorded for twenty years in the county where the real estate is situated, it shall be presumptive evidence of the facts therein stated.

The amendment of 1886 was by adding the words in last paragraph.

Section 1472, id., provides as follows:

§ 1472. If any part of the property remains unredeemed by a creditor, it must be conveyed by the sheriff to the purchaser upon the sale, except

where the certificate of sale has been assigned, in which case it must be conveyed to the last assignee. Any part or parts of the property sold, which have been redeemed by a creditor, must be conveyed by the sheriff to the last redeeming creditor, except where he has assigned the certificate of redemption, or has executed any other assignment of his right, title and interest in the property redeemed by him; in which case it must be conveyed to the last assignee.

And see section 1473, id., as to the cases in which the conveyance must be made to the executor or administrator of the person entitled to a deed, and as to the effect of such conveyance.

It is provided by section 1470, id., that the certificate of redemption given, pursuant to statute (§ 1469, id.), upon the redemption of lands sold under execution may be acknowledged, or proved and certified, in like manner as a deed to be recorded in the county where the property is situated, and that the recording thereof, in the office of the clerk or register of that county, in the book for recording deeds, has the same effect, as against subsequent purchasers and incumbrancers, as the recording of a conveyance.

2. These words of recital in brackets may be and usually are omitted in a sheriff's deed.

No. 580.

Sheriff's or referee's deed in action for foreclosure of mortgage of real property.

(N. Y. Code Civ. Proc., § 1632.)

This indenture, made the — day of —, 1—, between J. R., of —, sheriff of — county [or, referee in the action hereinafter mentioned], of the first part, and B. J., of —, of the second part.

Whereas, at a — Term of the — Court, held at —, on the — day of —, 1—, it was, among other things, ordered, adjudged and decreed by the said court, in a certain action then pending in the said court, between [name the plaintiffs] plaintiffs and [name the defendants] defendants, that all and singular the mortgaged premises mentioned in the complaint in said action, and in said judgment described, or such part thereof as might be sufficient to discharge the mortgage debt in said action, the expenses of the sale and the costs of the action, as provided by sections 1626 and 1676 of the Code of Civil Procedure, and which might be sold separately without material injury to the parties interested, be sold at public auction, according to law and the course and practice of said court, by or under the direction of the said sheriff of — county [or, by said J. R., who was appointed a referee in said action, and to whom it was referred by the said order and judgment of the said court, among other things, to make such sale]; that the said sale be made in the county where the said mortgaged premises, or the greater part thereof, are situated; that the said sheriff [or, said referee] give public notice of the time and place of such sale, according to law and the practice of said court, and that the plaintiff, or any other party in said action, might become a purchaser on such sale; and that the said sheriff [or, referee] execute to the purchaser or purchasers a deed or deed of the premises sold; and,

Whereas, the said sheriff [or, referee], in pursuance of the order and judgment of the said court, did, on the — day of —, 1—, sell at public auction, at — [state place and time of sale], the premises in the said judgment mentioned, due notice of the time and place of such sale being first

given, agreeably to the said judgment, at which sale the premises hereinafter described were struck off to the said party of the second part for the sum of — dollars, that being the highest sum bidden for the same :

Now, this indenture witnesseth, that the said sheriff [or, referee], the party of the first part to these presents, in order to carry into effect the sale so made by him as aforesaid, in pursuance of the judgment of the said court, and in conformity to the statute in such case made and provided, and also in consideration of the premises, and of the said sum of money so bidden as aforesaid, having been first duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth grant and convey unto the said party of the second part [insert description of property from judgment (or of portion conveyed)], to have and to hold, all and singular, the premises above mentioned and described, and hereby conveyed, or intended so to be, unto the said party of the second part, his heirs and assigns, to his and their only proper use, benefit and behoof, forever.

In witness whereof, the said party of the first part, sheriff [or, referee] as aforesaid, hath hereunto set his hand and seal, the day and year first above written.¹

J. R.

Sheriff [or, Referee]. [L. S.]

Sealed and delivered in presence of

(Acknowledgment or proof, as in form No. 89.)

1. An order requiring the referee, appointed to sell by a judgment in a foreclosure case, to convey by "a valid and sufficient deed," requires a deed sufficient in form and terms to make the title obtained by it as valid to the purchaser as it is in the power of the referee officially to make it. (*Easton v. Pickersgill*, 55 N. Y. 310.) And see that case generally as to the powers and duties of the referee or sheriff.

the Code of Civil Procedure of the State of New York are as follows :

§ 1632. A conveyance upon a sale, made pursuant to a final judgment, in an action to foreclose a mortgage upon real property, vests in the purchaser the same estate, only, that would have vested in the mortgagee, if the equity of redemption had been foreclosed. Such a conveyance is as valid, as if it was executed by the mortgagor and mortgagee, and is an entire bar against each of them, and

against each party to the action who was duly summoned, and every person claiming from, through, or under a party, by title accruing after the filing of the notice of the pendency of the action, as prescribed in the last section. See, also, section 1242, id.

No. 581.

Deed with covenants against grantor only.

This indenture, made this — day of —, 1—, between A. B., of the (city) of —, in the county of —, and State of — (and C. B., his wife), party (or, parties) of the first part, and C. D., of, etc., of the second part, witnesseth: That the said party (or, parties) of the first part, for and in consideration of the sum of — dollars, to him (or, them) in hand paid, the receipt whereof is hereby acknowledged, hath (or, have) granted, bargained, sold, released, conveyed and confirmed, and by these presents doth (or, do) grant, bargain, sell, release, convey and confirm, unto the said C. D., and to (his heirs and assigns forever),¹ all, etc. (describing property conveyed).

Together with all and singular, the hereditaments and appurtenances whatsoever, to the same belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and every part and parcel thereof, and also all the estate, right, title, interest, trust, property, claim and demand whatsoever, both at law and in equity, of the said party (or, parties) of the first part in, to or out of the said lands, tenements and hereditaments, and premises.

To have and to hold the said lands, tenements and hereditaments, and all and singular other the premises hereinbefore mentioned, with their appurtenances, unto the said party of the second part (his heirs and assigns), and to his and their only proper use and behoof.

And the said A. B. doth hereby, for himself, his heirs, executors and administrators covenant, promise and agree, to and with the said C. D., his heirs, executors, administrators and assigns, in manner and form following, that is to say: That the said party of the second part, his heirs and assigns, shall and may peaceably and quietly have, hold and enjoy the said lands, tenements, hereditaments and premises, and every part and parcel thereof, without the let, suit, trouble, eviction or disturbance, of the said A. B., his heirs

or assigns, or of, or by any other person or persons lawfully claiming or to claim from, by or under, or in trust for him, them or any of them.

And that the said lands, tenements, hereditaments and premises, and every part and parcel thereof, now are, and from henceforth shall continue, remain and be unto the said C. D. (his heirs and assigns), free and clear, and freely and clearly acquitted, exonerated and discharged, of, from and against all former and other gifts, grants, bargains, sales, mortgages, estates, titles, troubles, charges, and incumbrances whatsoever, had, done, committed, occasioned or suffered by the said A. B., or by any person lawfully claiming or to claim, by, from or under him, or by his, their, or any of their act, means, assent, or procurement.

And the said A. B. and his heirs, all and singular the aforesaid lands, tenements, hereditaments and premises, and every part and parcel thereof, unto the said C. D. (his heirs and assigns) against him, the said A. B., his heirs and assigns, shall and will warrant and forever defend by these presents.

In witness, etc. (as in form No. 574).²

A. B. [L. S.]

Sealed and delivered in presence of

C. D. [L. S.]

E. F.

(Acknowledgment or proof, as in forms Nos. 6, etc.)

1. As to conveyance of less than a fee, see form No. 574.

2. See generally as to conveyance, notes to form No. 574.

No. 582.

Deed of partition between heirs at law.

This indenture, made the — day of —, in the year 1—, between A. B.¹ of, etc., and C. B., his wife, one of the daughters and heirs of D. E., late of, etc., of the first part, and F. G., widow, sister of the said C. B., another of the daughters and heirs of the said D. E., of the second part, witnesseth: That it is covenanted, granted and agreed between the parties, for the partition to be had, and made of the inheritance of the lands, tenements and hereditaments, which descended to the said C. B. and F. G., in

coparcenary² (or, as tenants in common; or, as joint tenants), by and after the death of their father, the said D. E., in manner and form following: First. It is covenanted and granted between the said parties, and the said F. G. doth grant by these presents, that the said C. B. shall have for her part and property (or, portion) of the said lands, tenements and hereditaments, all, etc. (describing the share), which the said C. B. shall have and enjoy, to her and her heirs, in full recompense and allowance, of and for her part and purparty (or, portion) that to her belongeth, or ought to belong, of all the said lands, tenements and hereditaments, by and after the decease of the said D. E., as one of his daughters and heirs. Second. It is in like manner covenanted and granted, between the said parties, and the said A. B. and C. B., his wife, do grant by these presents, that the said F. G. shall have for her part and purparty (or, portion) of the aforesaid lands, tenements and hereditaments, all, etc. (describing the share) which the said F. G. shall have and enjoy to her and her heirs, in, etc. (as before).³

In witness, etc. (as in form No. 574).

| | |
|-------|---------|
| A. B. | [L. S.] |
| C. B. | [L. S.] |
| F. G. | [L. S.] |

Sealed and delivered in presence of E. F.

(Certificate of acknowledgment or proof, as in forms Nos. 6, etc.)

1. It is not necessary, however, that the husband should join in the conveyance by the wife of her separate property situated in New York State, and acquired subsequently to the acts chapter 200 of 1848, and chapter 375 of 1849. (*Hatfield v. Sneden*, 54 N. Y. 280, 287, and cases there cited; *Burke v. Valentine*, 52 Barb. 412; *aff'd* by Court of Appeals, 6 Alb. L. Jour. 167; *Beamish v. Hoyt*, 2 Robt. 307; *Mack v. Roch*, 21 Week. Dig. 488, and cases there cited.)

2. An estate in coparcenary always arises from descent. At common law it took place when a man died seized of an estate of inheritance, and left no male issue, but two or

more daughters or other female representatives in a remoter degree. In this case they all inherited equally as co-heirs in the same degree, or in unequal proportions, as co-heirs in different degrees. (4 Kent's Com. 366; Litt., §§ 241, 242.) Partition was confined to them, at common law. (*Coleman v. Coleman*, 19 Penn. St. 100.) By the New York Revised Statutes (vol. 1, 753, § 17; 7th ed., 2213), persons who take by descent under the statute, if there be more than one person entitled, take as tenants in common, in proportion to their respective rights; and it is only in very remote cases, which can scarcely ever arise, that the rules of

the common law doctrine of descent can apply. As estates descend in every State equally to all the children, no substantial difference is left between coparceners and tenants in common. The title inherited by more persons than one is in some of the States expressly declared to be tenancy in common, as in New York and New Jersey; and where it is not so declared, the effect is the same, and the technical distinction between coparcenary and estates in common may be considered as essentially extinguished in the United States. (4 Kent's Comm. 367.)

In Virginia the statute of descents calls all the heirs, male as well as female, parceners. (Id., note b.)

See, also, 1 Washb. Real Prop. 415; *Malcolm v. Rogers* (5 Cow. 188; S. C., 15 Am. Dec. 464); *Hoffar v. Dement* (5 Gill, 132); *Coles v. Wooding* (2 Pat. & H. 197); *Campbell v. Wallace* (12 N. H. 362); *Stevenson v. Cofferin* (20 id. 150).

3. See, generally, as to conveyances, note 1 to form No. 574. The partition may also be made by mutual releases between the parties seized in common, with or without recitals.

No. 583.

Deed of partition between tenants in common or joint tenants.

This indenture, made, etc., between A. B., of, etc. (and C. B., his wife), of the one part, and C. D., of, etc. (and F. D., his wife) of the other part, witnesseth: That, whereas, the said A. B. and C. D. have and hold in common, and as tenants in common (or, as joint tenants) (in equal parts), all, etc. (describing property). It is covenanted, granted, concluded and agreed, by and between the said parties, and each of them covenants, grants, concludes and agrees for himself (and herself), his (and her) heirs and assigns, that a partition be made of the said lands and other premises, in manner and form following, that is to say:

First. The said A. B. shall from henceforth have, hold, possess and enjoy in severalty, by himself, and to him and his heirs and assigns, for his (half) part, purparty, share and proportion of the said lands and premises, all, etc. (describing such share), together with all and singular, the hereditaments and appurtenances thereunto belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof [subject, etc. (describe any incumbrance, etc., subject to which the premises are conveyed)].

And the said C. D. (and F. D.), doth (or, do) accordingly give, grant, release and confirm unto the said A. B., his heirs

and assigns, the lands and premises so as aforesaid set apart to the said A. B., as and for his part and share aforesaid; and, moreover, the said C. D., for himself, his heirs, executors and administrators, doth hereby covenant to and with the said A. B., his heirs and assigns, that he, the said A. B., his heirs and assigns, shall and may from time to time, and at all times hereafter, well and peaceably have, hold, possess and enjoy the lands and premises hereinbefore assigned and conveyed to the said A. B., for his part and share as aforesaid, free, clear and discharged of and from all estates, rights, titles, interests, charges and incumbrances whatsoever, had, made, caused or suffered to be made, caused or suffered, of or by the said C. D., or any person claiming, or to claim, by, from or under him (except as aforesaid), and without any let, trouble, suit, entry, disturbance or interruption of the said C. D., his heirs or assigns, or of any person or persons, lawfully claiming, or to claim, by, from, or under him, them or any of them (except under the aforesaid —).

Second. The said C. D. shall from henceforth have, hold, possess and enjoy in severalty, by himself, etc. (proceed to set off his share as above, and add the covenants).

In witness, etc. (as in form No. 574).¹

A. B. [L. S.]

C. B. [L. S.]

C. D. [L. S.]

F. D. [L. S.]

Sealed and delivered in presence of

E. F.

(Certificate of acknowledgment or of proof, as in forms Nos. 6, etc.)

1. See the notes to last form, No. 582, and the notes therein referred to.

No. 584.

Deed with full covenants.

(Laws of N. Y. of 1890, chap. 475, § 6.)

This indenture, made the — day of —, in the year — hundred and —, between A. B., of — (insert residence), of the first part, and C. D., of — (insert residence), of the

second part, witnesseth : That the said party of the first part, in consideration of — dollars, lawful money of the United States, paid by the party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns, forever (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, his heirs and assigns, forever.

And the said party of the first part doth covenant with said party of the second part, as follows :

First. That the party of the first part is seized of said premises in fee simple, and has good right to convey the same.

Second. That the party of the second part shall quietly enjoy the said premises.

Third. That the said premises are free from encumbrances.

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises.

Fifth. That the party of the first part will forever warrant the title to said premises.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.¹

A. B. [L. S.]

In presence of

C. F.

(Acknowledgment, etc., by grantor, as in form No. 89.)

1. Section 6 of chapter 475 of Laws of New York of 1890, which act took effect September 1, 1890, provided that the schedules annexed to that act contained forms of instruments such as were authorized thereby, and were to be taken as a part thereof, but that nothing therein contained should invalidate or prevent the use of other forms. The above form of deed is contained in schedule "A," annexed to the act, chapter 547 of Laws of 1896, section 223, by which act chapter 475 of Laws of 1890 is repealed.

Section 7 of the same chapter, re-

pealed as aforesaid, provided that the register or county clerk of the county of New York and the county of Kings should be entitled to charge for the recording of any instruments containing the covenants mentioned in that act, or any of them at large, instead of the short forms thereof in that act contained, the sum of five dollars in addition to the fee chargeable by law for such recording.

See section 274 of said chapter 547 as to penalty for using long forms of covenants.

Section 5 of the same chapter of Laws of 1890 provided that all covenants contained in any grant or mortgage of real estate should bind the heirs, executors, successors, administrators and assigns, of the grantor or mortgagor, and should inure to the benefit of the heirs, executors, administrators, successors and assigns of the grantee or mortgagee, in the same manner and

to the same extent, and with like effect, as if such heirs, executors, etc., were so named in such covenants, unless otherwise in said grant or mortgage expressly provided.

See, also, § 222 of chapter 547 of Laws of 1896, to the same effect, and see as to construction of covenants in grants of freehold interests, section 218 *id.*

No. 585.

Executor's deed.

(Laws of N. Y. of 1890, chap. 475, § 6.)

This indenture, made the — day of —, eighteen hundred and —, between A. B., as executor of the last will and testament of C. D., late of —, deceased, of the first part, and E. F., of the second part, witnesseth:

That the said party of the first part, by virtue of the power and authority to him given in and by the said last will and testament, and in consideration of — dollars lawful money of the United States paid by the said party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever (description), together with the appurtenances, and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein, which the said party of the first part has, or has power to dispose of, whether individually, or by virtue of said will or otherwise.

To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever. And the said party of the first part covenants with said party of the second part that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.'

In presence of

A. B. [L. s.]

(Acknowledgment, as in form No. 89.)

1. This form of executor's deed is that contained in schedule "A," annexed to chapter 547 of Laws of New York of 1896. See, also, sections of that act referred to in notes to last form, No. 584.

No. 586.

Declaration of trust.

To all to whom these presents shall come, I, E. P., of the —, send greeting :

Whereas, W. F. and J. T., of said —, and their wives, have by their deed, bearing even date herewith, for the consideration of — dollars, granted and conveyed to me in fee simple, with (full covenants and) general warranty, all those certain — lots, pieces, or parcels of land, situate, lying and being in the — of —, in the county of —, and State of —, and known and distinguished on a certain map of the lands of —, made by J. B., surveyor, bearing date the — day of —, 1—, now on file in the office of the (county clerk of — county) as lots Nos. —, as by said deed will more fully appear; and, whereas, I have this day executed and delivered to the said W. F. a mortgage upon said premises, as collateral security for the payment of my bond, conditioned for the payment of — dollars, in — years, with interest at — per centum per annum, payable semi-annually, to secure a part of the consideration money expressed in their said deed to me. Now know ye, that I, the said E. P., do by these presents make known, admit and declare, that said premises were so conveyed to me, and that I now hold, and will continue to hold the same in trust only, for the use and benefit of E. H., son and heir at law of V. H., deceased, his heirs, executors and administrators, and that I have no beneficial interest therein, except what may arise by legal or equitable implication from the circumstance of my having executed the said bond and mortgage. And I do further admit that the residue of the consideration money expressed in said deed to me, to wit, the sum of — dollars, was paid by S. R., executrix of the last will and testament of said V. H., deceased, for the benefit of said E. H. And I do for myself, my heirs, executors and administrators, covenant and agree to and with said S. R. and E. H., and each of them, and with their and each of their executors and administrators and assigns,

that I, or my heirs, shall and will convey the said premises, by a good and sufficient deed, to the said E. H., or his assigns, as he or they may direct or require, whenever and as soon as the said mortgage, so executed by me, shall have been paid off and discharged, or otherwise fully secured to me, and that free, clear and discharged of and from all and every incumbrance thereon, by me or my heirs. And I do further, for myself, my heirs, executors, and administrators, covenant and agree, to and with the said S. R. and E. H., and each of them, their and each of their executors, administrators and assigns, that I or my heirs shall not do, or knowingly suffer or permit, any act, deed, matter or thing, whereby said premises can, shall, or may be in anywise impaired, injured, or incumbered, in title, interest, charge, estate, or otherwise howsoever.

In witness whereof, I have hereto set my hand and seal this — day of — in the year 1—. ¹

E. P. [L. S.]

Sealed and delivered in presence of

K. L.

(Certificate of acknowledgment or proof, as in forms Nos. 6, etc.)

1. Where an express trust is created but is not contained or declared in the conveyance to the trustees, such conveyance shall be deemed absolute as against the subsequent creditors of the trustees not having notice of the trust, and as against purchasers from such trustees, without notice, and for a valuable consideration. (1 N. Y. Rev. Stat., 729, § 64; 7th ed., 2183.) Trusts may be created in personal property by parol, and to accomplish this no particular form of words is necessary (Hirsh v. Auer, 146 N. Y. 13.)

No. 587.

Declaration of trust, where land is purchased by two or more, for the benefit of themselves and others.

To all to whom these presents shall come, we, A. B. and C. D., of —, send greeting:

Whereas, S. C. and others, the heirs of J. C., deceased, of the (city) of — in the county of —, and State of —, have by their certain deed bearing date on the day of the date hereof, for the price or consideration of — dollars, granted and conveyed to us, in fee simple, with (full covenants and) gen-

eral warranty, all that certain messuage, dwelling house and tract of land, and meadow land, and land covered with water, and premises of the said late J. C., deceased, situated in the town of — in the county of — and State of —, containing — acres, more or less, with all the appurtenances, as on reference to the said deed will more fully appear.

And whereas, we have this day paid the sum of — dollars, part of said purchase money, and have agreed to pay the further sum of — dollars on the — day of —, 1—, on which day, in order to secure the remainder of the said purchase money, we have also agreed to make and execute two several bonds, with mortgages, on the said property, one for the payment of — dollars in one year thereafter, without interest, and the other for the payment of — dollars, with interest at — per centum per annum, payable semi-annually; such interest to commence on the — day of —, in the year 1—; the principal of which said mortgage of — shall not be made payable within — years thereafter, nor until after all contingencies and other defects in regard to the title of the premises are satisfactorily removed or extinguished.

And whereas, J. C., J. F., C. B. and S. B., esquires, of —, have agreed to become interested with us in said purchase, and have this day made and delivered to us their respective bonds, conditioned for the payment of sundry portions of the said purchase money in proportion to their several and respective interests therein, in the manner and at the time above specified for the payment of the said purchase money:

Now, therefore, know ye, that we, the said A. B. and C. D., do by these presents make known, admit and declare, that the said premises were so conveyed to us by the said S. C. and others; and that we now hold and will continue to hold the same in trust for the use and benefit of ourselves, the said J. C. and J. F., their and each of their heirs, executors, administrators and assigns, as tenants in common, in fee simple, in proportion to their and our respective interests therein; and that the said J. C. is interested in and entitled to four equal undivided fortieth parts thereof (the whole in forty equal parts to be divided); that the said C. B. and S.

B. are together jointly interested in and entitled to four equal undivided fortieth parts of said premises; that the said J. T. is interested in and entitled to the one equal undivided fortieth part of the said premises; and that we, the said A. B. and C. D., are interested in and entitled to the remaining portions thereof, as follows, to wit: The said C. D. to fifteen equal undivided fortieth parts thereof, and the said A. B. to sixteen equal undivided fortieth parts thereof; and that we, the said A. B. and C. D., have no other beneficial interest in the respective portions of the said premises, of, in and to which the said J. C., J. T., C. B. and S. B. are so interested and entitled, except what may arise by legal or equitable implication from the circumstance of our having executed the said bonds and mortgages; it being hereby expressly understood and agreed, and these presents are upon this express condition, that if default shall at any time be made in the payment of the said sums of money mentioned in the said bond of the said J. C. (the name of only one of the parties interested to be inserted in this blank, each individual being entitled to receive one of these trust deeds), to the said A. B. and C. D., or any of them, according to the condition thereof, then and in every such case it shall and may be lawful for the said A. B. and C. D., their heirs, executors, administrators and assigns, to grant, bargain and sell the said interest of the said (J. C.), his heirs and assigns, in the said premises, or any part thereof, at public auction, and thereupon execute good and sufficient deeds to the purchaser therefor, according to law, and with the proceeds of such sale, to pay and discharge all such sums of money then due or to grow due upon the said bond, according to the condition thereof, and all costs and charges of such sale, as aforesaid; it being understood and agreed that at least twenty days' previous notice of the time and place of such sale shall be given by the said A. B. and C. D., by advertisement, in two or more of the daily newspapers printed in the city of New York, and in such other newspapers as shall then be printed in —; and that, in case the net proceeds of such sale shall not be sufficient to pay and satisfy the moneys so due and owing on the said bond,

and the costs and charges of such sale as aforesaid, the said (J. C.), his heirs, executors or administrators, shall still remain answerable for the deficiency, by suit or other proceeding on the said bond ; and that in case a surplus shall remain, after paying the said moneys, costs and charges, as aforesaid, such surplus shall belong and be paid over to the said (J. C.), his heirs, executors, administrators or assigns, on demand. And we do further admit and declare that the sum of — dollars, being — equal fortieth parts of the said sum of — dollars, the first installment of said purchase money, has this day been advanced and paid by the said (J. C.), and that all subsequent payments are to be made in the same proportion, through us, in our names, but for the joint benefit of ourselves and of the said other persons above referred to, in proportion to their and our respective interests therein.

And we do hereby, for ourselves respectively, and for our several and respective heirs, executors and administrators, jointly and severally covenant and agree, to and with the said (J. C.), his heirs, executors, administrators and assigns, that we and each of us, and our respective heirs, executors and administrators, shall and will, from time to time, and as soon in each case as the law will permit, pay and apply toward the satisfaction of the said bonds and mortgages, so given or to be given by us as aforesaid, all such moneys as shall be received by us or them, on account of the several bonds executed to us as aforesaid, by the said (J. C.), and the several other parties interested with us in the said purchase, as above recited, together with our own share or proportion (being thirty-one fortieths, as aforesaid) of the said bonds and mortgages so given, or to be given by us as aforesaid ; and that, whenever, and as soon as the said bonds so executed to us as aforesaid, shall be fully paid, we and each of us, or our respective heirs or assigns, shall and will grant and convey the said premises, by good and sufficient deeds or instruments in law, free from all incumbrances thereon, created or suffered by us respectively, or our respective heirs or assigns, to such person or persons in such parcels, and upon such terms in regard to price or payment therefor, as shall be agreed upon and directed by such of the persons or par-

ties then interested therein, as shall constitute a majority in point of interest of all such persons or parties; and to that end shall and will, if so directed by such majority, offer and expose the said premises, or any part or parcel thereof, for sale at public auction or otherwise, or concur in any measure which such majority may adopt or prescribe, for the partition of the said premises, or such part or parts thereof, as may at any time remain unsold, among the several persons or parties then interested therein, and grant and convey the same accordingly; we, or our respective heirs and assigns, from time to time accounting for and paying over, to the several persons or parties interested in the said premises as aforesaid, their ratable and just proportion of all such moneys as shall come to our or their hands, arising from the sale or disposition of the said premises, according to their respective shares or interests therein; and further, that we, our and each of our heirs, shall not do or permit any act, deed, matter or thing, whereby the interest of the said (J. C.) in the premises, or of any of the said other persons, can, shall or may be in anywise impaired, injured or incumbered, in title, interest, charge, estate, or otherwise howsoever, except as shall be agreed upon and directed by such of all said persons, so interested therein as shall constitute a majority of interest in the said premises for the general benefit.

In witness whereof, we have hereto set our respective hands and seals, this — day of —, in the year 1——.¹

A. B. [L. S.]

C. D. [L. S.]

Sealed and delivered in the presence of

F. G.

(Certificate of acknowledgment or proof, as in forms Nos. 6, etc.)

1. The above instrument does not create or declare a trust valid under the Revised Statutes of New York (See 1 N. Y. R. S., p. 728, § 55; 7th ed. 2181), except so far as subdivision 2 of that section authorizes a trust "To sell, mortgage or lease lands, for the benefit of legatees, or

for the purpose of satisfying any charge thereon." Its provisions are, however, sanctioned, it seems, as a power in trust, under section 58 of the same chapter (p. 729, id.; 7th ed. 2182), as an appointee or beneficiary is designated other than the donee of the power (Farmers' Loan and Trust

Co. v. Carroll, 5 Barb. 613), or its agreements may be enforced in an action for specific performance.

Section 1431 of the New York Code of Civil Procedure provides that real property, held by one person, in trust or for the use of another, is liable to levy and sale by virtue of an execution issued upon a judgment recovered against the person to whose use it is so held, in a case where it is prescribed by law, that, by reason of the invalidity of the trust, an estate vests in the beneficiary; but special provision is not otherwise made by law for the mode of subjecting it to his debts.

By section 47 of article 2, title 2, of chapter 1 of New York Revised Statutes, entitled "Of uses and trusts," it is provided that every person, who, by virtue of any grant, assignment or devise, now is, or hereafter shall be entitled to the actual possession of lands, and the receipts of the rents and profits thereof, in law or in equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions as his beneficial interest. (1 R. S. 727; 7th ed. 2180.)

By section 49 of the same article it

is provided that every disposition of lands, whether by deed or devise thereafter made, shall be directly to the person in whom the right to the possession and profits shall be intended to be invested, and not to any other, to the use of, or in trust for, such person; and if made to one or more persons, to the use of, or in trust for, another, no estate or interest, legal or equitable, shall vest in the trustee. (Id.)

Sections 51 and 52 of the same article provide that where a grant for a valuable consideration shall be made to one person, and the consideration therefor shall be paid by another, no use or trust shall result in favor of the person by whom such payment shall be made; but the title shall vest in the person named as the alienee in such conveyance, subject only to the provision that every such conveyance shall be presumed fraudulent, as against the creditors, at that time, of the person paying the consideration; and where a fraudulent intent is not disproved, a trust shall result in favor of such creditors, to the extent that may be necessary to satisfy their just demands. (Id. 728; 7th ed. 2181.)

No. 588.

A grant of annuity by deed.

This indenture, made, etc., between A. B., of —, of the one part, and C. D., of —, of the other part, witnesseth: That the said A. B., for and in consideration of the sum of — dollars, to him in hand well and truly paid by the said C. D., at or before the sealing and delivery of these presents, the receipt whereof the said A. B. doth hereby acknowledge, hath given, granted and confirmed, and by these presents doth give, grant and confirm unto the said C. D., and his as-

signs, one annuity yearly rent¹ or sum of — dollars, to be received, taken, had and to be issuing out of all that messuage etc. (describing same), with all and singular the appurtenances thereunto belonging and every part and parcel thereof, unto the said C. D., and his assigns, for and during (the natural life of him, the said C. D.)² payable and to be paid at (stating place of payment) in (half) yearly installments by even and equal portions; the first payment to begin and be made at or upon the — day of —, 1—. ³ And if it shall happen that the said annuity of — dollars, or any part thereof, be behind and unpaid, in part or in all, by the space of — days next after either of the said days or times of payment thereof, whereupon the same ought to be paid, as aforesaid; that then, and so often, at any time thereafter, it shall and may be lawful to and for the said C. D., and his assigns, into and upon the said messuage and premises above mentioned, or any part thereof, to enter, and the rents, issues and profits thereof to receive and take, until he be therewith and thereby or by the person or persons, who shall be then entitled to the immediate possession of the said premises, paid and satisfied the same and every part thereof, and all the arrears thereof incurred before, and that shall accrue during such time as he shall receive the rents, issues and profits thereof, or be entitled to receive the same by virtue of such entry to be made as aforesaid, together with her costs, damages and expenses laid out and sustained, by reason of the non-payment thereof, or any part thereof.

And the said A. B., for himself, his heirs, executors and administrators, doth covenant, grant and agree, to and with the said C. D., his executors administrators and assigns, that he, the said C. B., his heirs,⁴ executors or administrators, shall and will well and truly pay, or cause to be paid, unto the said C. D., his executors, administrators and assigns, the said annuity, or yearly rent charge, etc., above mentioned, at the days and times and in the manner and form as above expressed and limited for the payment thereof, according to the true intent and meaning of these presents. And also, that the said messuage, etc., above mentioned, to be charged and chargeable with the said annuity hereby granted, shall

from time to time be and continue over, and sufficient for the payment of the said annuity of — dollars yearly, during the life of the said C. D.

In witness whereof, etc. (as in form No. 585.)

A. B. [L. s.]

Sealed and delivered in presence of

E. F.

(Certificate of acknowledgment or proof, as in forms Nos. 6, etc.)

1. An annuity is defined by Lord Coke to be a yearly sum stipulated to be paid to another in fee, or for life or years, and chargeable only on the person of the grantor. (Co. Litt. 144b; 4 Kent's Comm. *460.) If it be agreed to be paid to the annuitant and his heirs, it is a personal fee, and transmissible by descent like an estate in fee, and forfeitable for treason as a hereditament (Co. Litt. 2a; Neville's case, 7 Co. 34b; 4 Kent id.) and for that reason it belongs to the class of incorporeal hereditaments (4 Kent, id. note c.) If the annuity is made chargeable upon land, it then becomes a rent charge, and descends to the heirs as real property. (Co. Litt. 144b; 4 Kent, *460.)

2. If an annuity is given, *simpliciter* to one, generally, a life interest only passes; but if an annuity be given out of the proceeds of property, or property generally, an annuity in perpetuity is given. (Knox v. Middlesex Hospital, 17 Eng. L. & Eq. 72; Palmer v. Newell, 39 id. 133.)

3. Previous to the passage of the act of 1875 (chap. 542, Laws of N. Y. of 1875) providing "for the ap-

portionment of rents, annuities, dividends and other payments," the rule of the common law prevailed in this State, and an annuity created by will save one given by a parent to an infant child or by a husband to his wife living separate and apart from him, was not apportionable as to time. (Kearney v. Cruikshank, 117 N. Y. 95, rev'g Reed v. Cruikshank, 46 Hun, 219. See, also, chap. 542, Laws of New York 1875, page 616; R. S., 7th ed. 2302, making annuities etc., thereafter created apportionable. The act is not to apply to any case in which it shall be expressly stipulated that no apportionment shall be made.

4. Unless the grantor grants the annuity for himself and his heirs, the heirs of the grantor are not bound, for the law presumes by the omission to name them, that he did not intend to include them in the obligation. (4 Kent's Comm. *460; Co. Litt. 144b.)

See, also, Booth v. Ammerman (4 Bradf. 129); Welsh v. Brown (14 Vroom (N. J.), 45); Bartlett v. State (6 New Eng. Rep. 645); Wetmore v. Peck (66 How. Pr. 54), generally as to annuities.

No. 589.

Deed of gift of lands.

This indenture, made, etc., between E. F. of, etc., of the one part, and G. F., son of the said E. F., of the other part,

witnesseth : That the said E. F., as well for and in consideration of the natural love and affection which he, the said E. F., hath and beareth unto the said G. F., as also for the better maintenance, support and livelihood of him, the said G. F., hath given, granted, aliened, conveyed and confirmed, and doth by these presents give, grant, alien, convey and confirm unto the said G. F., his heirs and assigns, all, etc. (describing property), together with all and singular the hereditaments and appurtenances thereunto belonging, or in any wise appertaining ; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever, of him, the said E. F., of, in and to the said lands, tenements and premises, and of, in and to every part and parcel thereof, with their and every of their appurtenances : To have and to hold the said lands, tenements, hereditaments, and all and singular the premises hereby granted and confirmed, or mentioned, or intended so to be, with their and every of their appurtenances, unto the said G. F., his heirs and assigns, to the only proper use and behoof of him, the said G. F., his heirs and assigns forever (subject, however (stating to what incumbrances, if any, the premises are subject)). And the said E. F., for himself, his heirs, executors and administrators, doth covenant, grant and agree, to and with the said G. F., his heirs and assigns, by these presents, that he, the said G. F., his heirs and assigns, shall, and lawfully may, from time to time, and at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the said lands, tenements, hereditaments and premises hereby granted and conveyed, or mentioned and intended to be hereby granted and conveyed with their and every of their appurtenances, free, clear and fully discharged, or well and sufficiently saved, kept harmless and indemnified of, from and against all former and other gifts, grants, bargains, sales, jointures, dower and estate, and of, from and against all former and other titles, troubles and charges, and incumbrances whatsoever (except as before stated), had, done or suffered, or to be had, made, done or suffered by him, the said E. F., his heirs or assigns, or any other person

or persons, lawfully claiming, or to claim, by, from or under him, them, or any of them.

In witness, etc. (as in form No. 586).¹

E. F. [L. S.]

Sealed and delivered in presence of

G. H.

(Certificate of acknowledgment or proof, as in forms Nos. 6, etc.)

1. W. purchased certain real estate, subject to a mortgage thereon, which by his deed he assumed and agreed to pay. He conveyed the land to his daughter by deed containing full covenants, in which no reference was made to the mortgage. The only consideration for the deed was natural love and affection. W., after the conveyance, paid part of the mortgage. The daughter, after his death, paid interest on the balance, and for the amount so paid presented a claim against his estate. *Held*, that the land was the primary fund for the payment of the mortgage, and the daughter took it subject to that burden; that the covenants in the deed were invalid, and W. incurred no obligation, legal or equitable, to pay the mortgage in exoneration of the land; and that, therefore, the claim was improperly allowed. (*Matter of Wilbur v. Warren*, 104 N. Y. 192, rev'g S. C., 40 Hun, 193.)

An executory covenant, supported only by a meritorious, as distinguished from a valuable or pecuniary consideration, cannot be enforced either at law or equity. (*Id.*)

In the State of New York, natural love and affection is held to be a good

and sufficient consideration between those of the same blood, and the insertion of a small nominal pecuniary consideration in addition, is not sufficient to indicate that the estate is passed as a purchase, and not as a gift. (*Morris v. Ward*, 36 N. Y. 587.)

See, also, *Duvoll v. Wilson* (9 Barb. 487).

By the New York Revised Statutes no conveyance or charge shall be considered fraudulent as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration, i. e., such as money, marriage, goods, services or whatever may be considered in law as an equivalent for the grant. The question of fraudulent intent in all cases, arising under the provisions of chapter 7 of part 2 of those statutes, entitled "Of fraudulent conveyances and contracts relative to real and personal property," is to be deemed a question of fact and not of law. (2 N. Y. Rev. Stat. 137, § 4; 7th ed. 2329.)

See *Billings v. Russell* (101 N. Y. 226); *Nugent v. Jacobs* (103 id. 125), among recent cases, as to the construction of this statute.

No. 590.

Deed of gift by a father to his son of personal property, the son to pay his father's debts, and allow him an annual sum; with clause of re-entry on default, etc.

This indenture, made the — day of —, in the year 1—, between A. B., of, etc., of the one part, and C. B., of, etc., of the other part: Whereas, the said A. B., being the father of the said C. B., by reason of his age and infirmities, is not capable of attending to his estate and affairs as formerly, and has therefore agreed, for advancement of the said C. B., to make over his property to the said C. B., so that the said C. B. should pay the debts of the said A. B., and offered him a maintenance as is hereinafter mentioned:

Now this indenture witnesseth: That the said A. B., in order to carry the said agreement into effect, and in consideration of the natural love and affection which he hath for and toward his son, the said C. B., and of the provisos, covenants and agreements hereinafter mentioned by the said C. B., to be observed and performed, hath given, granted, bargained, sold and assigned, and by these presents doth give, grant, bargain, sell and assign, unto the said C. B., his executors, administrators and assigns, all and singular his household goods, and implements of household, stock in trade, debts, rights, credits and personal estate whereof he is now possessed, or any ways interested in, or entitled to, of what nature or kind soever the same are, or wheresoever, or in whosoever hands they be, or may be found, with their and every of their rights, members, and appurtenances. To have and to hold the said goods, household stuff, stock in trade, debts, rights and personal estate, and other the premises, unto the said C. B., his executors, administrators and assigns, forever, without rendering any account therefor, or being in any wise accountable, to the said A. B., his heirs, executors or administrators, for the same.

And the said C. B., for himself, his heirs, executors and administrators, doth covenant, promise, grant and agree, to and with the said A. B., his executors, administrators and assigns, in manner and form following, that is to say: that he, the said C. B., his heirs, executors and administrators,

shall and will settle, pay, discharge and satisfy, or cause to be settled, paid, discharged and satisfied, all accounts, debts, judgments and demands of every nature and kind whatsoever, now outstanding, against, or now due from, or payable by the said A. B., or for the payment of which the said A. B. shall be liable, or be held liable, either at law or equity, on account of any matter, cause, or thing heretofore had, suffered, done or performed, and at all times hereafter free, discharge and keep harmless and indemnified, the said A. B., his heirs, executors and administrators, from all and every such accounts, debts, judgments and demands, and from all actions, suits and damages, that may to him or them arise, by reason of the non-payment thereof; and moreover, that he, the said C. B., his heirs, executors and administrators, shall and will, yearly and every year, during the term of the natural life of the said A. B., by four equal quarterly payments, the first to begin on the — day of — next, well and truly pay or cause to be paid to the said A. B., or his assigns, the sum of — dollars, for, or toward, his support and maintenance, or find and provide for him sufficient meat, drink, washing, lodging, apparel and attendance, suitable to his state and situation, at the choice and election, from time to time, of the said A. B.

Provided always, and upon this condition, that it is the true intent and meaning of these presents, that if the said C. B., his heirs, executors and administrators, shall neglect or refuse to pay the said accounts, debts, judgments and demands, according to his covenant aforesaid, or shall suffer the said A. B. to be put to any cost, charge, trouble or expense on account of the same, or shall neglect or refuse to pay the said annual sum in manner aforesaid, that then, in all, any or either of the cases aforesaid, it shall and may be lawful, to and for the said A. B., all and singular the premises hereby granted to take, repossess and enjoy, as in his former estate.

In witness, etc. (as in form No. 584).¹

A. B. [L. S.]

Sealed and delivered in presence of

E. F.

(Certificate of acknowledgment or proof, as in forms Nos. 6, etc.)

1. See note 1 to form No. 59.

No. 591.

Release of dower by widow endorsed upon deed.

Know all men by these presents: That A. B., the widow and relict of the within named C. B., lately deceased, in consideration of the sum of (ten dollars) to her in hand paid by the within named E. F. of, etc., the receipt whereof is hereby acknowledged, and for divers other good causes and considerations her thereunto moving, hath remised, released and forever quit-claimed, and by these presents doth, for herself, her heirs, executors and administrators, remise, release and forever quit-claim unto the said E. F., his heirs and assigns, all the dower and right and title of dower, and all the other estate, right, title, interest, claim and demand whatsoever, both at law and in equity, of her, the said A. B., which she now hath, or which she, her heirs, executors or administrators, can or may at any time hereafter have, claim or demand of, in, to or out of all and singular the said lands and premises, by the within indenture conveyed, or mentioned, or intended so to be, or their appurtenances, or any part thereof, so that she, the said A. B., her heirs, executors and administrators, or any of them, shall not, nor will, at any time hereafter, have, claim or pretend to any such dower, or right or title of dower or other estate, right, title, interest, pretense, claim or demand, as aforesaid, of, in, to or out of the said premises, or any part thereof, with their appurtenances, but of and from the same, and every part thereof, shall and will be from henceforth utterly debarred and excluded forever, by these presents.¹

In witness, etc. (as in form No. 586.)

A. B. [L. S.]

Sealed and delivered in presence of

G. H.

(Certificate of acknowledgment or proof, as in forms Nos. 6, etc.)

1. See notes to form No. 196.

No. 592.

Sheriff's or referee's deed in action for partition of real property.

(N. Y. Code Civ. Proc., §§ 1274, 1577.)

This indenture, made this — day of —, in the year one thousand eight hundred and —, between A. B., (late) sheriff of the county of — (or, referee in the action hereinafter mentioned), party of the first part, and C. D., of, etc., party of the second part :

Whereas, at a Special Term of the — Court of —, held at —, on the — day of —, one thousand — hundred and —, it was, among other things, ordered, adjudged and decreed by the said court, in a certain action then pending in the said court, between (name the plaintiffs), plaintiffs, and (name defendants), defendants, that all and singular the premises mentioned in the complaint in said action, and hereinafter described, be sold at public auction, according to the course and practice of said court, by or under the direction of the said sheriff of — county (or, by said A. B., who was appointed a referee in said action, and to whom it was referred by the said order and judgment of the said court, among other things, to make such sale); that the said sale be made in the county where the said premises, or the greater part thereof, are situated; that the referee give public notice of the time and place of such sale, according to law and the rules and practice of said court, and that any of the parties in said action might become a purchaser or purchasers on such sale; that the said referee, after said sale, make report thereof to said court, and after his report of sale shall have been duly confirmed, then that he execute to the purchaser or purchasers of the said premises, or such part or parts thereof as should be so sold, a good and sufficient deed or deeds of conveyance for the same.

And whereas, the said referee, in pursuance of the order and judgment of the said court, did, on the — day of —,

one thousand — hundred and —, sell at public auction, at (stating place of sale), at — o'clock, at noon (or, in the — noon), the premises in said order and judgment mentioned, due notice of the time and place of such sale being first given, agreeably to the said order; at which sale the premises hereinafter described were struck off to the said party of the second part, for the sum of — dollars, that being the highest sum bidden for the same, and the said sheriff's (or, referee's) report of said sale having been duly confirmed by an order of the court directing the said sheriff (or, referee) to execute the proper conveyances of said premises sold pursuant to the sale, and also directing concerning the application of the proceeds of the sale:

Now, this indenture witnesseth: That the said sheriff (or, referee), the party of the first part to these presents, in order to carry into effect the sale so made by him as aforesaid, in pursuance of the order and judgment of said court, and in conformity to the statute in such case made and provided, and also in consideration of the premises, and of the said sum of money so bidden as aforesaid, being first duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth grant and convey, unto the said party of the second part, all [the right, title and interest of (stating particular party or parties, whose right, title or interest is directed to be sold, and whose right, title and interest was sold and is conveyed, as required by section 1244 of the New York Code of Civil Procedure)],¹ of, in and to all that tract or parcel of land situate in the (city) of —, in the county of —, bounded and described as follows: (describing the same). To have and to hold, all and singular, the premises above mentioned and described, and hereby conveyed, or intended so to be, unto the said party of the second part, his heirs and assigns, to his and their only proper use, benefit and behoof forever.

In witness whereof, the said party of the first part, referee as aforesaid, hath hereunto set his hand and seal the day and year first above written.²

A. B., [L. S.]

Referee (or, Sheriff of) — county.

Sealed and delivered in the presence of

M. N.

(Acknowledgment, etc., as in form No. 89.)

1. See *Randall v. Von Ellert* (12 Hun, 577 S. C., 4 Abb. N. C. 88), as a sheriff or referee in partition since the amendment of 1879 to New York Code of Civil Procedure. seldom be required in a deed by

2. See note 1 to form No. 593.

No. 593.

Deed by special guardian of infants' property, under order of the court.

(N. Y. Code Civ. Proc., § 2356.)

This indenture, made the — day of —, in the year of our Lord one thousand — hundred and —, between (*) A. B. and E. B., infants under the age of twenty-one years, by W. K., their special guardian, of the first part, and B. P., of —, of the second part, witnesseth:

Whereas, the above named infant A. B., who is over the age of fourteen years, and M. B., general guardian (or, guardian of the property; or, next friend; or, mother, etc.) of the above named infant E. B., who is under the age of fourteen years, and of the said infant A. B., heretofore presented to the (Supreme Court of the State of New York), a petition praying for a sale of the right, title, and interest of the said infants in the premises, in said petition mentioned and hereinafter described. Upon which petition, an order of the said court was made, at a (Special) Term thereof, held at the —, in the (city) of —, in the county of —, bearing date the — day of —, 1 —, appointing said W. R., above named, the special guardian of such infants, for the purposes of the said application, and directing that it be referred to M. N., a referee, to ascertain the

truth of the facts in such petition alleged; and thereupon, after the said special guardian had given the security by law required, and the same had been duly approved and filed, such proceedings were afterward had, that by an order of the said (Supreme) Court, made at a (Special) Term thereof, held at the (city) of —, in the county of —, bearing date the — day of —, in the year 1—, it was, among other things, in substance ordered, that the above named W. R., as special guardian of such infants, be authorized to contract for the sale and conveyance of the right, title and interest of the said infants in such real estate, for a sum not less than that specified in the referee's report in said order mentioned; and that such sale, with the name of the purchaser and the terms thereof, be reported to the said court before the conveyance of such premises should be executed.

And, whereas, the said special guardian, upon terms, and in the manner authorized by the said last mentioned order, contracted for the sale of the said premises with the above named B. P., for the sum of — dollars, that being the highest sum offered for the same; and thereupon the said guardian made his report on oath, of such agreement, to this court, pursuant to the requisitions of the last recited order, upon which an order was made, at a (Special) Term of said court, held at the —, in the (city) of —, in the county of —, bearing date the — day of —, 1—, confirming such report, approving and confirming such sale, and directing the same to be carried into effect, and ordering the said guardian to execute, acknowledge and deliver a deed of said premises to said party of the second part on his complying with the terms on which by said agreement the same was to be delivered.

And, whereas, the said party of the second part has complied with the said terms: Now, therefore, this indenture witnesseth, that the said parties of the first part, by their said special guardian, for and in consideration of — dollars, to them in hand paid, before the ensealing and delivery of these presents, have bargained, sold, granted, released and conveyed, and by these presents do bargain, sell, grant, release and convey unto —, the said party of the second

part, his heirs and assigns, forever, all (describing property), with the possession and claim of the parties of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances, to have and to hold the same unto the said party of the second part, his heirs and assigns, to his and their only benefit and behoof forever.

In witness whereof, the said parties of the first part, by their guardian aforesaid, have hereunto set their hands and seals the day and year first above written.¹

A. B.

E. B.,

Infants.

By W. R.,

their special guardian.

Sealed and delivered in the presence of

E. F.

(Acknowledgment or proof by guardian, as in form No. 89.)

1. See sections 2356, 2358 of the New York Code of Civil Procedure and Hyatt v. Seeley (11 N. Y. 52); Battell v. Burrill (10 Abb. N. S. 103); O'Reilly v. King (2 Robt. 593;

S. C., 28 How. Pr. 409); Cole v. Gourlay (79 N. Y. 535, aff'g S. C., 9 Hun, 493); Walrath v. Abbott (75 Hun, 445), as to this deed and its effect.

For release of dower by widow, see next form, No. 594.

No. 594.

Release by widow of her right of dower in property conveyed by form No. 593.

(N. Y. Code Civ. Pro., § 2362.)

Know all men by these presents: That I, C. B., widow of F. B., late of —, deceased, for and in consideration of the sum of — dollars, to me in hand paid by B. P., of —, the receipt of which is hereby confessed and acknowledged, have granted, bargained, sold, remised, released and quit-claimed, and by these presents do grant, bargain, sell, remise, release and quit-claim to the said B. P., his heirs and assigns, all that certain piece or parcel of land, (describing premises) to have and to hold the said premises, with the appurtenances, to the

said B. P., his heirs and assigns, to and for the use of him, his heirs and assigns forever.

And the said C. B., for herself, her heirs, executors and administrators, doth covenant and agree, to and with the said B. P., his heirs and assigns, that she hath not done, committed or suffered any act whereby the said above described premises now are, or at any time have been incumbered or affected in any manner whatever.

In witness whereof I, the said C. B., have hereunto set my hand and seal, this — day of —, 1——.¹

C. B. [L. s.]

Sealed and delivered in presence of

E. F.

(Acknowledgment, etc., as in form No. 89.)

1. See N. Y. Code of Civil Procedure, § 2362, as to this release.

No. 595.

Deed by committee of lunatic of lunatic's property.

(N. Y. Code Civ. Proc., § 2356.)

As in form No. 593, to (*) and from thence as follows: A. F., of, etc., committee of the person and estate of E. B., a lunatic, of the first part, and M. N., of, etc., party of the second part, witnesseth: Whereas, by an order of the Supreme Court of the State of New York (or, of the County Court of — county), made on the — day of —, in the year 1——, reciting that it appeared to the said court that the personal estate of the said E. B. is insufficient for the payment of his debts (or, state other grounds of application), said A. F., as such committee, was, among other things, authorized, empowered and directed to sell, at public or private sale, subject to the approbation of the court, the premises hereinafter described, for the purpose of paying and discharging the debts of said lunatic, and to report the terms of sale or sales made by him to the court, on oath, before any contract or deed should be executed. And whereas, the said A. F., as such committee, having, pursuant to said order,

on the — day of —, 1—, made his report to the court, on oath, stating that he had entered into an agreement, subject to the approbation of the court, with M. N., aforesaid, for the sale to him of the premises hereinafter described, for the sum of — dollars, to be paid upon the delivery of the deed therefor. And whereas, by another order of the said court, made on the — day of —, 1—, it was ordered that the said report and said agreement be ratified and confirmed, and that the said committee should execute, acknowledge and deliver to the said M. N. a good and sufficient conveyance of the tract of land so purchased by him, upon receiving the purchase money agreed to be paid therefor :

Now, therefore, this indenture witnesseth, that the said party of the first part, committee as aforesaid, by virtue of the power and authority conferred upon him by the several orders above mentioned, and in pursuance of the statute in such case made and provided, and in consideration of the sum of — dollars, the said purchase money, to him in hand paid, at or before the ensealing and delivery of these presents, by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, hath granted, bargained, sold, remised, released and conveyed, and by these presents, doth grant, bargain, sell, remise, release and convey unto the said party of the second part, his heirs and assigns forever, all the right, title and interest of the said lunatic, of, in and to all that certain, etc. (describing property), to have and to hold the said premises and every part and parcel thereof, with the appurtenances, to the said M. N., his heirs and assigns, to his and their only proper use, benefit and behoof forever.¹

A. F., [L. S.]

Sealed and delivered in presence of

Committee.

G. H.

(Acknowledgment, etc., as in form No. 89.)

1. See note 1 to last form, No. 594.

No. 596.

Deed on sale of property of decedent for payment of debts, etc.

(N. Y. Code Civ. Proc., § 2776.)

This indenture, made the — day of —, in the year 1—, between M. N., executor of the will (or, administrator of, etc.), of A. F., deceased, late of, etc., of the first part, and C. D., of, etc., of the second part, witnesseth :

That whereas a decree was made by the Surrogate's Court of the county of —, dated —, 1—, by which it was directed by said court that the real property hereinafter described, or so much thereof as should be necessary in order to pay the debts and funeral expenses of the said decedent, as established by the said decree be sold for the payment of the said debts (or, funeral expenses) by said A. B. (executor), as aforesaid, upon his filing a bond, as required by law, which said bond has been duly filed as required by said order. And whereas, an order was thereupon duly made by the said Surrogate's Court, directing the execution of the said decree by the said executor. And whereas the said property (or, the part of said property) described in said decree (hereinafter described), was accordingly sold by the said (executor), on the — day of —, 1—, at public auction at —, in the (city) of —, in the county of —, and State of New York, that being the county in which said premises are situated, due notice of the time and place of said sale having been given according to law. And whereas, the said party of the first part did, on the — day of —, 1—, file his report of said sale with the surrogate of said county, in pursuance of the said decree and of the statute in such case provided. And whereas, the said surrogate did, after examining the said proceedings, on the — day of —, 1—, make an order confirming the said report of sale, and the said sale, and directing the said party of the first part to execute a conveyance of the said real property to the party of the second part, to whom the said premises (or, the parcel of said premises hereinafter described), were sold at the said sale, he being the highest bidder for the same, for the sum of — dollars :

Now, therefore, the said party of the first part, in pursuance of the said sale, and of the said orders of said Surrogate's Court, and in pursuance of the statutes of this State, in such case made and provided, and also in consideration of said sum of — dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, hath bargained, sold, granted and conveyed, and by these presents doth bargain, sell, grant and convey, unto the said party of the second part, his heirs and assigns forever, all etc. (describing the premises conveyed.)

Together with the privileges and appurtenances thereunto belonging or in any way appertaining, and all the estate, right, title and interest which the said A. F., deceased, had, at the time of his death, of, in and to the same, free and discharged from all claims of dower of J. F., widow of the said A. F., deceased; subject, however, to all charges by judgment, mortgage or otherwise, upon the lands so sold, existing at the time of the death of the said A. F.

To have and to hold the above described and conveyed premises, with the appurtenances, and all the estate, right and interest which the said A. F. had therein at the time of his death, unto the said party of the second part, his heirs and assigns forever, as fully and amply as the said party of the first part might, could or ought to sell and convey the same, by virtue of the orders above recited and of the statutes of this State made and provided, or otherwise.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.¹

M. N.,

Executor. [L. S.]

(Acknowledgment, etc., as in form No. 89.)

1. See sections 2749-2801 of New York Code of Civil Procedure as to this proceeding; and see *Stilwell v. Swarthout* (81 N. Y. 109); *O'Connor v. Huggins* (113 id. 511).

TITLE II.

FORMS OF DEEDS IN THE DIFFERENT STATES AND TERRITORIES OF THE
UNITED STATES, STATUTORY AND OTHERWISE.

- No. 597. Form of deed in State of Alabama.
598. Same in Territory of Arizona.
599. Same in State of Arkansas.
600. Same in State of California.
601. Same in State of Colorado.
602. Same in State of Connecticut.
603. Same in Dakota Territory, now North and South Dakota.
604. Same in State of Delaware.
605. Same in District of Columbia.
606. Same in State of Florida.
607. Same in State of Georgia.
608. Same in State of Idaho.
609. Same, with covenants, in State of Illinois.
610. Same, without covenants, in State of Illinois.
611. Same, with covenants, in State of Indiana.
612. Same, of quit-claim, in State of Indiana.
613. Same in Indian Territory.
614. Same, of quit-claim, in fee simple and with covenant of warranty,
in the State of Iowa.
615. Forms of warranty and quit-claim deeds in the State of Kansas.
616. Form of deed in the State of Kentucky.
617. Form of deed in State of Louisiana.
618. Same in State of Maine.
619. Form of deed conveying a fee simple in real estate, in State of
Maryland.
620. Same where married woman is a party.
621. Form of deed conveying estate for life in real estate, in State of
Maryland.
622. Form of deed in State of Massachusetts.
623. Same in State of Michigan.
624. Same in State of Minnesota.
625. Same in State of Mississippi.
626. Same in State of Missouri.
627. Same in State of Montana.
628. Same in State of Nebraska.
629. Same in State of Nevada.
630. Same in State of New Hampshire.
631. Same in State of New Jersey.
632. Same in Territory of New Mexico.
633. Same in State of New York.
634. Form of executor's deed in State of New York.
635. Form of deed in State of North Carolina.
636. Same in State of North Dakota.

- No. 637. Same in State of Ohio.
 638. Same in Territory of Oklahoma.
 639. Same in State of Oregon.
 640. Same in State of Pennsylvania.
 641. Same in State of Rhode Island.
 642. Same in State of South Carolina.
 643. Same in State of South Dakota.
 644. Same in State of Tennessee.
 645. Same in State of Texas.
 646. Same in Territory of Utah.
 647. Same in State of Vermont.
 648. Same in State of Virginia.
 649. Form of warranty deed in State of Washington.
 650. Form of deed of bargain and sale in State of Washington.
 651. Form of quit-claim deed in State of Washington.
 652. Form of deed in State of West Virginia.
 653. Form of warranty and quit-claim deed in State of Wisconsin.
 654. Form of deed in State of Wyoming.

No. 597.

Form of deed in State of Alabama.

(Code of Alabama, §§ 2144, 2145.)

Same as in form No. 574.¹

(Acknowledgment, as in forms Nos. 6, etc.)

¹All persons aged twenty-one years, and not under a legal incapacity, may alien their lands, and any interest therein, whether immediate or future, certain or contingent, by instrument in writing, or by their last will, under the regulations prescribed by law. (Code of Alabama (1876), § 2144.)

Conveyances for the alienation of lands must be written or printed on parchment or paper, and must be signed at their foot by the contracting party, or his agent having a written authority; or, if he is not able to sign his name, then his name must be written for him, with the words

“his mark” written against the same or over it; the execution of such conveyance must be attested by one, or where the party cannot write, by two witnesses who are able to write and who must write their names as witnesses. (Id., § 2145.) A seal is not necessary to pass the legal title to lands. (Id., § 2948.)

The acknowledgment dispenses with the necessity of witnesses. (Id., § 2146.)

See, also, *Weil Bros. v. Pope* (45 Ala. 526), and forms Nos. 6, 7, 8 and notes thereto.

No. 598.

Form of deed in the Territory of Arizona.

(Rev. Stat. of Arizona, tit. xi, ¶ 218, § 5.)

THE TERRITORY OF ARIZONA, }
 County of ———. }

Know all men by these presents, that I, ———, of the (give name of city, town or county), in the Territory aforesaid, for and in consideration of ——— dollars, to me in hand paid by ———, have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said ———, of the (give name of city, town or county), in the Territory of ———, all that certain (describe the premises). To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging unto the said ———, his heirs and assigns forever. And I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said ———, his heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

Witness my hand this ——— day of ———, A. D. 1——.¹

Signed and delivered in presence of ———.

1. The following form, or the same in substance, shall be sufficient as a conveyance of the fee simple of any real estate with a covenant of general warranty, viz.: (here is inserted the above form of conveyance.) (Rev. Stat. of Arizona (1887), tit. xi, ¶ 218, § 5.)

No person shall be obliged to insert the covenant of warranty, or be restrained from inserting any clause or clauses in conveyances hereafter to be made that may be deemed proper and advisable by the purchaser and seller, and other forms not contravening the laws of the land shall not be invalidated. (Id., ¶ 219, § 6.)

Every deed or conveyance of real estate must be signed or acknowledged by the grantor in the presence of at least two credible subscribing witnesses thereto; or, must be duly acknowledged before some officer authorized to take acknowledgments, and properly certified to by him for registration. (Id., ¶ 220, § 7.)

From the use of the word "grant" or "convey" in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs and assigns, are implied, unless restrained

by express terms contained in such conveyance. 1. That previous to the time of the execution of such conveyance the grantor has not conveyed the same estate or any right, title or interest therein, to any person other than the grantee. 2. That such estate is, at the time of the execution of such conveyance, free from incumbrances. 3. Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance. (Id., ¶ 223, § 10.)

The term "incumbrances" includes taxes, assessments and all liens upon real property. (Id., ¶ 224, § 11.)

Married women of the age of seventeen years or upwards, may convey and transfer lands, or any estate or interest therein, vested in or held by

them in their own right, without being joined by the husband in such conveyance, as fully and perfectly as they might do if unmarried. (Id., ¶ 225, § 12.)

The homestead of a family shall not be sold and conveyed by the owner, if not a married man, without the consent of the wife. Such consent shall be evidenced by the wife joining in the conveyance, and signing her name thereto; and also by her separate acknowledgment thereof, taken and certified to before the proper officer and in the mode prescribed by law for the taking of acknowledgments of married women in such cases. (Id., ¶ 226, § 13.)

See, also, forms Nos. 9, 10, and notes thereto.

No. 599.

Form of deed in State of Arkansas.

(Mansfield's Dig. Stats of Arkansas (1884), § 639.)

Same as form No. 574, without covenants.¹

(Acknowledgment, etc., as in forms Nos. 12-15.)

1. All lands, tenements and hereditaments may be aliened and possession thereof transferred by deed without livery of seizin, and the words "*grant, bargain and sell*" shall be an express covenant to the grantee, his heirs and assigns, that the grantor is seized of an indefeasible estate in fee simple, free from incumbrance done or suffered from the grantor, except rents and services that may be expressly reserved by such deed, as also for the quiet enjoyment thereof against the grantor, his heirs and assigns, and from the claim or demand of all other persons whatsoever, unless limited by express words in such deed. (Mans-

field's Dig. of Stats. of Arkansas (1884), § 639.) See *Brodie v. Watkins* (31 Ark. 319); *Winston v. Vaughan* (22 id. 72); *Floyd v. Ricks* (14 id. 286); *Cloye v. Beebe* (id. 489).

The term or word "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple; but all deeds shall be construed to convey a complete estate of inheritance in fee simple, unless expressly limited by appropriate words in such deed. (Same Digest, § 641.)

Deeds and instruments of writing for the conveyance of real estate shall be executed in the presence of two disinterested witnesses, or, in

default thereof, shall be acknowledged by the grantor in the presence of two such witnesses, who shall then subscribe such deed or instrument in writing for the conveyance of such real estate; and when the witnesses do not subscribe the deed or instrument of writing aforesaid at the time of the execution thereof, the date of their subscribing the same shall be stated with their signatures. (Id., § 650.)

A married woman may convey her real estate or any part thereof by deed of conveyance, executed by herself and her husband, and acknowledged and certified in the manner hereinafter prescribed. (Id., § 648.)

A married woman may relinquish her *dower* in any of the real estate of her husband by joining with him in a deed of conveyance thereof, and acknowledging the same in the manner hereinafter prescribed. (Id., § 649.)

See, also, *Cocke v. Brogan* (5 Ark. 693); *McDaniel v. Grace* (15 id. 465, 475); *Jackson v. Allen* (30 id. 110), generally as to deeds; *Watson v. Billings* (38 id. 278); *Witter v. Biscoe* (13 id. 422); *Meyer v. Gossett* (38 id. 377); *Pillow v. Wade* (31 id. 678); *Countz v. Märkling* (30 id. 17); *Dutton v. Stuart* (41 id. 101), as to relinquishment of dower.

It is a general principle of the common law that the laws of the place where real property is situate exclusively govern, in respect to the rights of the parties, the modes of transfer and the solemnities which should accompany them; and so a married woman, residing in Louisiana, can convey lands in Arkansas, only in the manner prescribed by the statute. (*McDaniel v. Grace*, *supra*.)

See, also, forms Nos. 12-15, and notes thereto.

No. 600.

Form of deed in State of California.

(Civil Code of California, § 1092.)

I, A. B., grant to C. D., all that real property situated in (insert name of county) county, State of California, bounded (or, described) as follows (here insert description, or if the land sought to be conveyed has a descriptive name, it may be described by the name, or for instance, 'The Norris Ranch').

Witness my hand this (insert day) day of (insert month), 1——.¹

A. B.

(Acknowledgment, as in forms Nos. 16, 17.)

1. A grant of an estate in real property may be made in substance as follows: (here is inserted above form.) (Civil Code of California, § 1092.)

No estate in the real property of a married woman passes by any grant purporting to be executed or acknowledged by her, unless the grant or instrument is acknowledged by

her in the manner prescribed by sections 1186 and 1191. (Id., § 1093.)

An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law, or by an instrument in writing, subscribed by the party disposing of the same, or by his agent thereunto authorized by writing. (Civil Code of California, § 1091.)

A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended. (Id., §§ 1072, 1105.) See, also, *Mabury v. Ruiz* (58 Cal. 11, 15).

From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs and assigns, are implied, unless restrained by express

words in such conveyance. 1. That previous to the time of the execution of such conveyance the grantor has not conveyed the same estate, or any right, title, or interest therein, to any person other than the grantee; 2. That such estate is at the time of the execution of such conveyance free from incumbrances done, made, or suffered by the grantor, or any person claiming under him. Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance. (Id., § 1113.)

The term "incumbrances," includes taxes, assessments and all liens upon real property. (Id., § 1114.)

See, also, §§ 1733, 1734, id., as to term "usual covenants" and what it means in an agreement on the part of the seller of real property to give them, and see forms Nos. 16, 17, and notes thereto.

No. 601.

Form of deed in State of Colorado.

(Stats. of Colorado, 1891, chap. 29, § 427.)

Same as in form No. 574.

(Acknowledgment, as in form No. 18.)¹

1. Any person, association of persons, body politic or corporate, who shall be entitled to hold real estate, or any interest in real estate whatever, shall be authorized to convey the same to another or others, or body corporate or politic by deed. (Mills' Ann. Stats. of Colorado (1891), chap. 29, vol. 1, § 427.)

Every estate in land, which shall be granted, conveyed or devised to one, although other words heretofore necessary to transfer an estate of inheritance be not added, shall be deemed a fee simple estate of inherit-

ance, if a less estate be not limited by express words, or do not appear to be granted, devised or conveyed by operation of law. (Id., § 433.)

All conveyances of real estate, and of any interest therein, duly executed and delivered, shall be held to carry with them the right to immediate possession of the premises or interest conveyed, unless a future day for the possession is therein specified. (Id., § 435.)

Covenants of seizin, peaceable possession, freedom from incumbrances, and of warranty, contained in any

conveyance of real estate, or of any interest therein, shall be held to run with the premises, and to inure to the benefit of all subsequent purchasers and incumbrancers. (Id., § 436.)

Any instrument of writing to which the maker shall affix a scroll, by way of seal, shall be of the same effect and obligation to all intents as if the same were sealed. (Id., § 440.)

It shall not be necessary to the proper execution of any conveyance affecting real estate property that the same shall be executed under the seal of the grantor, nor that any seal or scroll or other mark be set opposite the name of the grantor. (Id., § 441.)

See, also, form No. 18, and note thereto.

No. 602.

Form of deed in State of Connecticut.

(Gen. Stats. of Connecticut, §§ 2954, 2956.)

Same as form No. 574.

(Acknowledgment, as in form No. 19.)¹

1. See note 1 to form No. 19.

No. 603.

Form of deed in Dakota Territory, now North and South Dakota.

(Civil Code of Dakota, § 3247.)

This grant made the — day of — in the year 1—, between A. B. of — of the first part, and C. D. of — of the second part, witnesseth: That the party of the first party hereby grants to the party of the second part, in consideration of — dollars, now received, all the real property situated in — and bounded (or, described) as follows: (insert description.)

Witness the hand of the party of the first part.¹

A. B.

(Acknowledgment, etc., as in form No. 21.)

1. The above form of grant is prescribed by the Civil Code of Dakota, § 3247. From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of

the grantor, for himself and his heirs to the grantee, his heirs and assigns are implied unless restrained by express terms contained in such conveyance: 1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the

same estate, or any right, title or interest therein, to any person other than the grantee. 2. That such estate is, at the time of the execution of such conveyance, free from incumbrances done, made or suffered by the grantor, or any person claiming under him. Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance. (Id., § 3249.)

See, also, form No. 21, and note 1 thereto.

No. 604.

Form of deed in State of Delaware.

(Rev. Stats. of Delaware, chap. 83, § 1.)

Same as in form No. 574.

(Acknowledgment, as in form No. 26.)¹

1. Lands, tenements and hereditaments may be aliened and possession thereof transferred by deed, without livery of seizin; and the legal estate shall accompany the use and pass with it. (Rev. Stats. of Delaware, chap. 83, § 1.)

in a deed, the words *grant, bargain and sell* shall, unless specially restrained, imply a special warranty against a grantor and his heirs, and all persons claiming under him. (Id., § 2.)

See, also, form No. 26, and notes thereto.

Where there is no express covenant

No. 605.

Form of deed in District of Columbia.

(Rev. Stats. of U. S. relating to District of Columbia, §§ 442, etc.)

Same as in form No. 574.¹

(Acknowledgment, as in form No. 28.)

1. See form No. 28, and note thereto.

No. 606.

Form of warranty deed in the State of Florida.

(Laws of Florida of 1891, chap. 4038, No. 29, § 1.)

"This indenture, made this — day of —, A. D. —, between — of the county of — in the State of —, party of the first part, and — of the county of — in the State of —, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of — dollars, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part, his heirs and assigns forever, the following described land, to wit: (description). And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.”¹

(Name of grantor.) [L. S.]

Sealed and delivered in presence of

M. N.

(Acknowledgment, as in forms Nos. 29, 30.)

1. Warranty deeds of conveyance to land may be in the following form, viz.: (Here is inserted above form as quoted.) (Laws of Florida of 1891, chap. 403§ (No. 29), § 1.)

A deed executed in the foregoing form shall be held to be a warranty deed with full common law covenants, and shall just as effectually bind the grantor and his heirs as if said covenants were specifically set out therein. And this form of deed,

when signed by a married woman shall be held to convey whatever interest in the property conveyed, which she may possess. (Id., § 2.)

Such deeds shall be executed and acknowledged as is now or may hereafter be provided by the law regulating conveyances of realty by deed. (Id., § 3.)

See, also, form No. 29, and note 1 thereto.

No. 607.

Form of deed in the State of Georgia.

(Code of Georgia, § 2690.)

Same as in form No. 574.¹

1. See note 1 to form No. 31, and for acknowledgment and proof, see that form and form No. 32. See *McDonough v. Martin* (46 Alb. L. J. 511), as to covenants in deed of Georgia real estate.

No. 608.

Form of deed in State of Idaho.

(Rev. Stats. of Idaho, § 2920.)

Same as in form No. 574.¹

1. See section 2920 of Revised Statutes of Idaho, cited in note 1 to form No. 33, and see that form and note,

and forms Nos. 34, 35 for acknowledgment.

No. 609.**Form of deed, with covenants, in the State of Illinois.**

(Hurd's Rev. Stats. of Illinois (1891), chap. 30, § 9.)

The grantor (here insert name or names and place of residence) for and in consideration of (here insert consideration) in hand paid, conveys and warrants to (here insert the grantee's name or names) the following described real estate (here insert description) situated in the county of —, in the State of Illinois (hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of this State).

Dated this — day of —, A. D. 1—.

A. B. [L. S.]

(Acknowledgment, as in form No. 36.)

1. Deeds for the conveyance of land may be substantially in the following form: (here is inserted above form.) Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple, to the grantee, his heirs or assigns, with covenants on the part of the grantor, (1) that at the time of the making and delivery of such deed he was lawfully seized of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all incumbrances; and (3) that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same. And such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at length in such deed. (Hurd's Rev. Stats. of Illinois (1891), chap. 30, § 9.)

See *Lehndorf v. Cope* (122 Ill. 317, 325), that a warranty deed in statutory form is equivalent to full covenant deed.

The words "hereby releasing," etc., release or waive the homestead rights of the grantor in the real estate conveyed.

See, also, form No. 36, and note 1 thereto.

No. 610.**Form of deed, without covenants, in the State of Illinois.**

(Hurd's Rev. Stats. of Illinois (1891), chap. 30, § 10.)

The grantor (here insert grantor's name or names and place of residence), for the consideration of (here insert consideration) convey and quit claim to (here insert grantee's

name or names), all interest in the following described real estate (here insert description), situated in the county of —, in the State of Illinois (hereby releasing, etc., as in last form, No. 609).¹

Dated this — day of —, A. D. 1—.

A. B. [L. S.]

(Acknowledgment, as in form No. 36.)

1. Quit-claim deeds may be in substance in the following form: (here is inserted the above form). Every deed in substance in the form prescribed in this section, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quit claim to the grantee, his heirs and assigns, in fee, of all the then existing legal or equitable rights of the grantor, in the premises therein described, but shall not extend to after acquired title unless words are added expressing such intention. (Hurd's Rev. Stats. of Illinois (1891), chap. 30, § 10.) See, also, form No. 36 and note thereto, and note to last form, No. 609.

No. 611.

Form of deed, with covenants, in the State of Indiana.

(Rev. Stats. of Indiana, § 2927.)

A. B. conveys and warrants to C. D. (here describe the premises), for the sum of (here insert the consideration).¹

Dated —, 1—.

A. B. [L. S.]

(Acknowledgment, etc., as in forms Nos. 38, 39.)

1. Section 2927 of the Revised Statutes of Indiana provides that any conveyance of lands, worded in substance as follows: (here is inserted the above form of conveyance), the said conveyance being dated, and duly signed, sealed and acknowledged by the grantor, shall be deemed and held to be a conveyance in fee simple to the grantee, his heirs and assigns, with covenant from the grantor, for himself and his heirs and personal representatives, that he is lawfully seized of the premises, has good right to convey the same, and guaranties the quiet possession thereof; that the same are free from all incumbrances, and that he will warrant and defend the title to the same against all lawful claims.

See, also, *Keiper v. Klein* (51 Ind. 316), and see form No. 38, and note 1 thereto.

No. 612.**Form of quit-claim deed in the State of Indiana.**

(Rev. Stats. of Indiana, § 2928.)

A. B. quit-claims to C. D. (here describe the premises), for the sum of (here insert the consideration).¹

A. B. [L. S.]

(Acknowledgment, etc., as in forms Nos. 38, 39.)

1. Section 2928 of the Revised Statutes of Indiana provides that any conveyance of land, worded in substance as follows: (here is inserted the above form of conveyance), the said conveyance being duly signed, sealed and acknowledged by the grantor, shall be deemed to be a good and sufficient conveyance in quit-claim to the grantee, his heirs and assigns.

No. 613.**Form of deed in the Indian Territory.**Same as in form No. 574.¹

1. For form of acknowledgment, see form No. 40, and note 1 thereto.

No. 614.**Forms of deeds of quit-claim, in fee simple and of warranty, in the State of Iowa.**

(McClain's Ann. Stats. of Iowa, § 3145.)

For the consideration of — dollars, I hereby quit claim to A. B. all my interest in the following tracts of land (describing it).¹

C. D.

In presence of

B. M.

(Acknowledgment, as in form No. 41.)

For the consideration of — dollars, I hereby convey to A. B. the following tract of land (describing it).

C. D.

In presence of

M. B.

(Acknowledgment as above.)

The same as the last preceding form, adding the words, "and I warrant the title against all persons whomsoever" (or, other words of warranty as the party may desire).

In presence of

C. D.

M. B.

(Acknowledgment as above.)

1. By section 3145 of McClain's Annotated Code of Iowa, it is provided that the following or other equivalent forms, varied to suit circumstances, are sufficient for the purposes therein contemplated: For a quit-claim deed (here is inserted the first above form). For a deed in fee simple, without warranty (here is inserted the second above form). For a deed in fee, with warranty (here is inserted the third above form).

By paragraph 20 of chapter 3, id.,

p. 12, it is provided that the word "deed" is applied to an instrument conveying lands, but does not imply a sealed instrument.

A seal is not, therefore, essential to the validity of a conveyance (Pierson v. Armstrong, 1 Iowa, 282), though it formerly was so. (Switzer v. Knapps, 10 id. 72; Simms v. Hervey, 19 id. 273, 290.)

See, also, forms Nos. 41, 42 and notes thereto.

No. 615.

Forms of warranty and quit-claim deeds in the State of Kansas.

(Gen. Stats. of Kansas (1889), ¶ 1110.)

A. B. conveys and warrants to C. D. (here describe the premises), for the sum of (here insert the consideration).¹

(Acknowledgment, as in form No. 43.)

A. B

1. Any conveyance of lands, worded in substance as follows: (here is inserted the above form of conveyance), the said conveyance being dated, duly signed and acknowledged by the grantor, shall be deemed and held a conveyance in fee simple to the grantee, his or her heirs and assigns, with covenants from the grantor, for himself and his heirs and personal representatives, that he is lawfully seized of the premises, has good right to convey the same, and guarantees the quiet possession thereof, that the same are free and clear from all incumbrances, and he

will warrant and defend the same against all lawful claims. (Gen. Stats. of Kansas (1889), ¶ 1110.)

Any conveyance of lands, worded in substance as follows: A. B. quit-claims to C. D. (here describe the premises), for the sum of (here insert the consideration), the said conveyance being duly signed and acknowledged by the grantor, shall be deemed to be a good and sufficient conveyance in quit-claim to the grantee, his heirs and assigns. (Id., ¶ 1111.)

See, also, form No. 43 and note 1 to that form.

No. 616.**Form of deed in the State of Kentucky.**

(Gen. Stats. of Kentucky, chap. 24, § 1.)

Same as form No. 574.

(Acknowledgment, as in forms Nos. 44, 45.)¹

1. The owner may convey any interest in lands not in the adverse possession of another. (Gen. Stats. of Kentucky (1887), chap. 24, § 1.)

No estate of inheritance, or freehold, or for a term of more than one year, in lands, shall be conveyed, unless by deed or will. (Id., § 2.)

All deeds of bargain and sale, deeds to stand seized to use, deeds of release, and deeds of trust, shall be held to vest the possession of the grantor in the grantee to the extent of the estate intended to be conveyed. (Id., § 3.)

Every deed of release shall be as effectual for the purposes therein expressed without the execution of a lease, as if the same had been executed. (Id., § 4.)

A covenant by a grantor in a deed, "that he will warrant the property hereby conveyed," or words of like import, shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, would forever warrant and defend the said property unto the grantee, his heirs, personal representatives, and assigns, against the claims and demands of all persons whatever. (Id., § 5.)

A covenant by the grantee "that he will warrant specially the property thereby conveyed," or words of like import, shall have the same effect as if the grantor had covenanted that he, his heirs and personal representatives, would forever warrant and defend the said property unto the grantee, his heirs, personal representatives, and assignees, against the claims and demands of the grantor, and all persons claiming, or to claim, by, through or under him. (Id., § 6.)

The words "with warranty" or "with general warranty" in any deed, shall be deemed to be a covenant by the grantor, "that he will warrant the property conveyed." The words "with special warranty" in any deed, shall be deemed to be a covenant by the grantor, "that he will warrant specially the property conveyed." (Id., § 7.)

A seal or scroll shall in no case be necessary to give effect to a deed or other writing. * * * But this section shall not apply, nor shall it alter any law requiring the State or county seal, or the seal of a court, corporation or notary to any writing. (Id., chap. 22, § 2.)

See, also, forms Nos. 44, 45, and notes thereto.

No. 617.**Form of deed in State of Louisiana.**

Same as in form No. 574.

(Acknowledgment, as in form No. 46.)¹

1. Conveyances of lands, or immovables, or shares in a succession including immovables, are good in the simplest form. A good deed is made

by a writing, signed by the vendor, naming the price, describing the thing and the parties, and proved and recorded in the conveyance book of the parish where the property is situated, the property being delivered.

A plantation may be sold by written receipt expressed by a few lines.

In every sale a warranty is implied if not expressed.

Where a deed is required to be in writing it requires the same kind of proof to show the authority of an agent to act for his mandator as is required in the case of the grantor, as to which see form No. 46 and note 1 thereto.

No. 618.

Form of deed in the State of Maine.

(Rev. Stats. of Maine, chap. 73, § 14.)

Same as in form No. 574.

(Acknowledgment, as in form No. 47.)¹

1. See form No. 47 and note 1 thereto.

No. 619.

Form of a deed conveying a fee simple in real estate in the State of Maryland.

(Pub. Gen. Laws of Maryland, art. 21, § 51.)

This deed, made this — day of —, in the year 1—, by me (here insert the name of the grantor), witnesseth: That in consideration of (here insert consideration), I, the said —, do grant unto (here insert the name of grantee), all that (here describe the property).

Witness my hand and seal.¹

C. D. [L. S.]

Test:

A. B.

(Acknowledgment, as in forms Nos. 48, 50.)

1. The following forms shall be sufficient to convey real or personal property (here are inserted, among other forms of conveyances, the above form and forms Nos. 620, 621. (Code of Maryland, art. 21, § 51.) See Carrico v. Farmers, etc., Bank (33 Md. 235).

The foregoing forms, or forms to

like effect, shall be sufficient, and any covenant, limitation, restriction or provision allowed by law may be added, annexed to or introduced with the foregoing forms. (Id., § 63.)

Any other forms conforming to the rules hereinbefore laid down, or to the rules of law, shall be sufficient. (Id., § 64.)

No. 620.**Form of deed in State of Maryland, when married woman is a party.**

(Same statute as in last form.)

This deed, made this — day of —, in the year 1—, by us, — and —, his wife, witnesseth: That in consideration of —, we, the said — and his wife, do grant unto —.

Witness our hands and seals.¹

A. B. [L. S.]

Test :

C. B. [L. S.]

C. D.

(Acknowledgment, as in forms Nos. 49, 50.)

1. See note 1 to last form, as to this form of conveyance.

No. 621.**Form of deed conveying estate for life in real estate in State of Maryland.**

(Same statute as in form No. 618.)

This deed, made this — day of —, in the year 1—, by me, — witnesseth: That in consideration of —, I, the said —, do grant unto —, to hold during his life and no longer.

Witness my hand and seal.¹

C. D. [L. S.]

Test :

A. B.

(Acknowledgment, as in forms Nos. 49, 50.)

1. See note 1 to form No. 48, as to this form of conveyance.

No. 622.**Form of deed in State of Massachusetts.**

(Pub. Stats. of Massachusetts, chap. 120, § 1.)

Same as in form No. 574.

(Acknowledgment, etc., as in forms Nos. 51-53.)¹

1. A deed executed and delivered by the person, or by the attorney of the person having authority therefor, shall be sufficient, without any other act or ceremony, to convey real estate. (Pub. Stats. of Massachusetts, chap. 120, § 1.) A deed of quit-claim and release shall be sufficient to convey all the estate which could lawfully be con-

veyed by a deed of bargain and sale. (Id., § 2.)

An estate or interest in land created without an instrument in writing signed by the grantor or by his attorney shall have the force and effect of an estate at will only, and no estate or interest in land shall be assigned, granted or surrendered unless by such writing or by operation of law. (Id., § 3.)

A conveyance of an estate in fee

simple, fee tail or for life, or a lease for more than seven years from the making thereof, shall not be valid as against any person other than the grantor or lessor, and his heirs and devisees and persons having actual notice of it unless it is recorded in the registry of deeds for the county or district in which the real estate to which it relates is situated. (Id., § 4.)

See, also, forms Nos. 51-53, and the notes thereto.

No. 623.

Form of deed in the State of Michigan.

(Howell's Ann. Stats. of Michigan (1882), §§ 5728, 5729.)

A. B. conveys and warrants to C. D. (here describe the premises), for the sum of (here insert the consideration.)¹

Dated —, 1—.

A. B. [L. S.]

(Acknowledgment, as in form No. 54.)

1. Any conveyance of land, worded in substance as follows: (here is inserted the above form of deed), the said conveyance being dated and duly signed, sealed and acknowledged by the grantor, shall be deemed and held to be a conveyance in fee simple to the grantee, his heirs and assigns, with covenant from the grantor for himself and his heirs and personal representatives, that he is lawfully seized of the premises, has good right to convey the same, and guarantees the quiet possession thereof; that the same are free from all all incumbrances, and that he will war-

rant and defend the title to the same against all lawful claims. (Howell's Ann. Stats. of Michigan (1882), § 5728).

Any conveyance of lands, worded in substance as follows: "A. B. quit-claims to C. D. (here describe the premises), for the sum of (here insert the consideration)," the said conveyance being duly signed, sealed and acknowledged by the grantor, shall be deemed to be a good and sufficient conveyance in quit-claim to the grantee, his heirs and assigns. (Id., § 5729.)

See, also, form No. 54, and note 1 to that form.

No. 624.

Form of deed in the State of Minnesota.

(Stats. of Minnesota, § 4109.)

Same as form No. 574.

(Acknowledgment, etc., as in forms Nos. 55-57.)¹

1. Conveyances of lands, or of any estate or interest therein, may be made by deed, executed by any person having authority to convey the

same, or by his attorney, and acknowledged and recorded in the registry of deeds for the county where the lands lie, without any other act or ceremony. (Stats. of Minnesota (1891), § 4109.)

A husband and wife may convey any real estate by their duly authorized agent or attorney, and may by their joint deed convey the real estate of the wife in like manner as she might do by her separate deed if she was not married, nor shall the minority of the wife in any manner affect the validity of such deed. (Id., § 4110.)

Every corporation authorized to hold real estate may convey the same by an agent appointed by vote for that purpose. (Id.)

Whenever the corporators, members, stockholders, trustees or directors of any corporation, by a vote or resolution, appoint an agent to convey the real estate of said corporation, a copy of such vote or resolution, certified by the clerk or secretary of such corporation, may be recorded in the office of the register of deeds of the county in which the real estate to which such vote or resolution relates is situated. And such vote or resolution, when so certified, or a transcript of such record duly certified, may be used in evidence in the same manner and with like effect as a conveyance recorded in such county. (Id., § 4111.)

A deed of quit claim and release, of the form in common use, is sufficient to pass all the estate which the grantor could convey by deed of bargain and sale. The word "heir" or "heirs," or other words of inheritance, shall not be necessary to create or convey an estate in fee simple. Any conveyance by deed of land in this state, heretofore executed, without

the word "heir" or "heirs," or other words of inheritance therein, shall be deemed and received as *prima facie* proof of an intention on the part of the parties to such conveyance to convey an estate in fee simple. (Id., § 4112.)

In all conveyances of real estate by deed or mortgage, upon which any incumbrance exists, the grantor, whether he executes the same in his own right, or as executor administrator, assignee, trustee or otherwise, by order of law, shall, before the consideration is paid, by exception in the deed or otherwise, make known to the grantee the existence and nature of such prior incumbrance, so far as he has knowledge thereof. (Id., § 4114.)

Whoever conveys real estate by deed or mortgage containing a covenant that it is free from all incumbrances, when an incumbrance appears of record to exist thereon, whether known or unknown to him, shall be liable, in an action of contract, to the grantee, his heirs, executor, administrator, successors or assigns, for all damages sustained in removing the same. (Id., § 4115.)

No covenant shall be implied in any conveyance or mortgage of real estate, whether such conveyance contains special covenants or not. Nor shall any grant or conveyance of lands, or interest therein, be void, for the reason that, at the time of the execution thereof, such land was in the actual possession of another claiming adversely. (Id., § 4116.)

A scroll or device, used as a seal upon any deed or conveyance or other instrument whatever, whether intended to be recorded or not, shall have the same force and effect as a seal attached thereto, or impressed thereon; but this section shall not

be construed to apply to official seals. (Id., § 4117.) A deed of land requires two witnesses. (Id., § 4121.)

See, as to conveyances by married women, sections 3865-3871, id.
See, also, forms Nos. 55-57, and notes thereto.

No. 625.

Form of deed in State of Mississippi.

(Rev. Code of Mississippi, § 1231.)

In consideration of (here state it) I convey and warrant to — the land described as (describe it).

Witness my signature the — day of —, 1—.¹

(Acknowledgment, etc., as in forms Nos. 58, 59.)

1. A conveyance of land may be in the following form, and shall be effective to transfer all the right, title, claim and possession of the person making it, as can be done by any sort of conveyance, viz.: (here is inserted the above form.) (Rev. Code of Mississippi, § 1231.)

If only a special warranty is intended, add the word "specially" to the word "warrant" in the conveyance. (Id., § 1232.)

The word "warrant," without restrictive words, in a conveyance shall constitute a covenant by the grantor that he and his heirs and personal representatives will forever warrant and defend the title of the property unto the grantee, and his heirs, rep-

resentatives and assigns against the claims of all persons whomsoever, lawfully claiming the same. (Id., § 1233.)

The words "warrant specially" in a conveyance shall constitute a covenant that the grantor, his heirs and personal representatives will forever warrant and defend the title of the property unto the grantee and his heirs, representatives and assigns against the claims of all persons claiming by, through or under the grantor. (Id., § 1234.)

A conveyance without any warranty, shall operate to transfer the title and possession of the grantor, as a quit-claim and release. (Id., § 1235.) See also form No. 829.

No. 626.

Form of deed in the State of Missouri.

(Rev. Stats. of Missouri, § 2395.)

Same as in form No. 574.

(Acknowledgment, as in forms Nos. 60-62.)¹

1. Conveyances of lands, or of any estate or interest therein, may be made by deed executed by any person having authority to convey the same, or by his agent or attorney,

and acknowledged or recorded as herein directed, without any other act or ceremony whatever. (Rev. Stats. of Missouri, § 2395.)

A husband and wife may convey the

real estate of the wife, and the wife may relinquish her dower in the real estate of her husband, by their joint deed acknowledged and certified as herein provided; but no covenant expressed or implied in such deed shall bind the wife or the heirs, except so far as may be necessary effectually to convey from her and her heirs all right, title and interest expressed to be conveyed therein. (Id., § 2396.)

Any private corporation authorized to hold real estate may convey the same by deed, sealed with the common seal of such corporation, and signed by the president or presiding member or trustee thereof; and such deed, when acknowledged or proved, as other deeds of real estate are by law required to be acknowledged or proved, shall be recorded in the proper office and have like effect as other deeds. (Id., § 2399.)

All deeds or other conveyances of lands, or of any estate or interest therein, shall be subscribed and sealed by the party granting the same, or by his lawful agent, and shall be acknowledged or proved and certified

in the manner herein prescribed. (Id., § 2401.)

The words "grant, bargain and sell" in all conveyances in which any estate of inheritance in fee simple is limited, shall, unless restrained by expressed terms contained in such conveyances, be construed to be the following expressed covenants on the part of the grantor, for himself and his heirs, to the grantee, his heirs and assigns: First, that the grantor was, at the time of the execution of such conveyance, seized of an indefeasible estate, in fee simple, in the real estate thereby granted; second, that such real estate was, at the time of the execution of such conveyance, free from encumbrances done or suffered by the grantor or any person under whom he claims; third, for further assurances of such real estate to be made by the grantor and his heirs to the grantee and his heirs and assigns; and may be sued upon in the same manner as if such covenants were expressly inserted in the conveyance. (Id., § 2402.)

See, also, forms Nos. 60-62, and notes thereto.

No. 627.

Form of deed in State of Montana.

(Comp. Stats. of Montana, § 235.)

Same as form No. 574.

(Acknowledgment, etc., as in forms Nos. 63-65.)¹

1. Conveyances of land, or of any estate or interest therein, may be made by deed signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded as hereinafter directed. (Comp. Stats. of Montana, § 235.)

A husband and wife may, by their joint deed, convey the real estate of

the wife in like manner as she might do by her separate deed if she were unmarried. (Id., § 236.)

Conveyances, except by municipal or other corporations which are required by law to attest their action under seal, may be executed without seal. (Id., § 1963.)

See, also, forms Nos. 63-65 and notes thereto.

No. 628.**Form of deed in the State of Nebraska.**

(Cons. Stats. of Nebraska, § 4324.)

Same as in form No. 574.

(Acknowledgment, as in form No. 66.)¹

1. Deeds of real estate, or any interest therein in this State, except leases for one year or for a less time, if executed in this State, must be signed by the grantor or grantors, being of lawful age, in the presence of at least one competent witness, who shall subscribe his or her name as a witness thereto, and be acknowledged or proved and recorded as directed by this chapter. (Cons. Stats. of Nebraska, § 4324.)

No seal is required. (Id., § 4417.)

If executed and acknowledged or proved in any other State, etc., of the United States, it must be executed and acknowledged or proved either according to the laws of such State, etc., or in accordance with the laws of this State. (Id., § 4327.) See *Roode v. State* (5 Neb. 174).

See, also, form No. 66, and note thereto.

No. 629.**Form of deed in the State of Nevada.**

(Gen. Stats. of Nevada, § 2569.)

Same as in form No. 574.

(Acknowledgment, as in forms Nos. 67-69.)¹

1. Conveyances of lands, or of any estate or interest therein, may be made by deed, signed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded, as hereinafter directed. (Gen. Stats. of Nevada, § 2569.)

A husband and wife may, by their joint deed, convey the real estate of the wife in like manner as she might do by her separate deed if she were unmarried. (Id., § 2570.)

No seal is required upon a conveyance. (Id., § 2667.)

See, also, forms Nos. 67-69, and notes thereto.

No. 630.**Form of deed in the State of New Hampshire.**

(Pub. Stats. of New Hampshire, chap. 137, § 1.)

Same as in form No. 574.

(Acknowledgment, as in form No. 70.)¹

1. Real estate may be conveyed by his attorney, acknowledged and recorded as directed in this chapter, deed, executed by any person or by

without any other act or ceremony whatever. (Pub. Stats. of New Hampshire, chap. 137, § 1.)

Any public or private corporation authorized to hold real estate may convey the same by an agent appointed by vote for that purpose. (Id., § 2.)

Deeds and other conveyances of

real estate are to be signed and sealed by the party granting the same, and attested by two or more witnesses and acknowledged and recorded in the registry of deeds in the county in which the land lies. (Id., § 3.)

See, also, form No. 70, and note thereto.

No. 631.

Form of deed in the State of New Jersey.

(Rev. Stats. of New Jersey, pp. 152, etc.)

Same as in form No. 574.¹

1. See forms Nos. 71-74, and notes thereto.

No. 632.

Form of deed in the Territory of New Mexico.

(Comp. Laws of New Mexico, § 2748.)

Same as in form No. 574.

(Acknowledgment, as in forms Nos. 75-77.)¹

1. Any person or persons, or body politic, holding, or who may hold, any right or title to real estate in this Territory, be it absolute or limited, in possession, remainder or reversion may convey the same in the manner and subject to the restrictions prescribed in this act. (Comp. Laws of New Mexico, § 2748.)

The words "bargained and sold," or words to the same effect, in all conveyances of hereditary real estate, unless restricted in express terms on the part of the person conveying the same, himself and his heirs, to the person to whom the property is conveyed, his heirs and assignees, shall be limited to the following effect: First: That the grantor, at the time of the

execution of said conveyance, is possessed of an irrevocable possession in fee simple to the property so conveyed. Second: That the said real estate, at the time of the execution of said conveyance, is free from all incumbrance made or suffered to be made by the grantor, or by any person claiming the same under him. Third: For the greater security of the person, his heirs and assignees, to whom said real estate is conveyed by the grantor and his heirs, suits may be instituted the same as if the conditions were stipulated in the said conveyance. (Id., § 2750.)

See, also, forms Nos. 75-77, and note thereto.

No. 633.**Form of deed in the State of New York.**

(Laws of N. Y. of 1890, chap. 475, § 6.)

Same as in form No. 584.¹

1. See form No. 584. and notes thereto. A married woman in New York State has the same right to dispose of her real estate as a single woman. Her acknowledgment of deed is in same form as that of a single woman. (Laws of N. Y. of 1896, ch. 272, § 21; Id., ch. 547, § 251).

No. 634.**Form of executor's deed in State of New York.**

(Laws of N. Y. of 1890, chap. 475, § 6.)

Same as in form No. 585.¹

1. See form No. 585, and notes thereto.

No. 635.**Form of deed in the State of North Carolina.**

(Code of North Carolina, § 1245.)

Same as in form No. 574.

(Acknowledgment, as in forms Nos. 78, 79.)¹

1. No conveyance of land nor ceremony whatever. (Code of North Carolina, 1883, § 1245.)
 contract to convey, nor lease of land for more than three years, shall be good and available in law unless the same shall be acknowledged by the grantor or proved on oath by one or more witnesses in the manner hereinafter directed, and registered in the county where the land shall lie within two years after the date of the said deed; and all deeds so executed and registered shall be valid, and pass estates in land without livery of seizin, attornment or other
 All deeds of gift of any estate of whatever nature shall within two years after the making thereof be proved in due form and registered, or otherwise shall be void. (Id., § 1252.)
 Conveyances, etc., affecting the estate, right or title of any married woman in lands, etc., must be executed by such married woman and her husband. (Id., § 1256.)
 See, also, forms Nos. 78, 79, and notes thereto.

No. 636.**Form of deed in the State of North Dakota.**Same as in form No. 574.¹

1. See form of deed in Dakota Territory, form No. 603, and notes thereto.

No. 637.**Form of deed in State of Ohio.**

(Rev. Stats. of Ohio, § 4106.)

Same as in form No. 574.

(Acknowledgment, as in forms Nos. 108, 109.)¹

¹ A deed, mortgage or lease of any estate or interest in real property, shall be signed by the grantor, etc., and such signing shall be acknowledged by the grantor, etc., in the presence of two witnesses, who shall attest the signing and subscribe their names to the attestation, and such signing shall also be acknowledged by the grantor, etc. (Rev. Stats. of Ohio, § 4106.)

est of a married person in real property shall be signed, attested, acknowledged, and certified in the manner prescribed in the preceding section. (Id., § 4107.)

The affixing of a private seal to any instrument shall not give such instrument any additional force or effect, or in any way change the construction thereof. (Id., § 4.)

See, also, forms Nos. 108, 109 and notes thereto.

A deed, etc., of any estate or inter-

No. 638.**Form of deed in Oklahoma Territory.**

(Stats. of Oklahoma (1890), chap. 23, § 2.)

Know all men by these presents, that I (or, we) —, for and in consideration of — dollars, in hand paid, do hereby sell and convey to — the following real property situated in — county, Territory of Oklahoma, to wit: (description); with all its appurtenances, and warrant the title to the same.

Signed and delivered this — day of —, 1 —.¹

In presence of

A. B. [L. S.]

M. E.

(Acknowledgment, as in form No. 110.)

1. Deeds of conveyance of real property, shall be substantially in the following form: (here is inserted the form above given). (Stats. of Oklahoma (1890), chap. 23, § 2.)

Every deed in substance in the above form, when otherwise properly executed, shall be deemed and held a conveyance in fee simple to the grantee, his heirs or assigns, with

covenants on the part of the grantor, as follows: First. That at the time of making and delivery of such deed, he was legally seized of the indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same. Second. That the same were then free from all incumbrances and that he warrants to the

grantee, his heirs and assigns, a quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same, and such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at length in such deeds. (Stats. of Oklahoma (1890), chap. 23, § 3.)

A deed executed according to the

form in section 2 of this act, with the words "quit claim" substituted for "convey" and the words "warrant title to the same" omitted therefrom, shall be a deed of quit claim, and shall have the effect to convey to the grantee all interest the grantor then held in the land, but the grantee shall hold the land conveyed subject to all outstanding rights or equities thereto, then existing in the hands of others. (Id., § 5.)

No. 639.

Form of deed in the State of Oregon.

(Stats. of Oregon, § 3002.)

Same as in form No. 574.

(Acknowledgment, as in forms Nos. 113, 114.)¹

1. Conveyances of lands or of any estate or interest therein may be made by deed signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved, and recorded as directed in this title, without any other act or ceremony whatever. (Hill's Ann. Laws of Oregon, § 3002.) See *Lambert v. Smith* (9 Or. 185, 191); *Field v. Columbot* (4 Saw. 527); *Knights v. Smith* (1 Or. 277).

A lease is not a conveyance, within the meaning of this Code. (*Edwards v. Perkins*, 7 Or. 149.)

A husband and wife may convey

the real estate of the wife, by their joint deed, but the wife is not bound by any covenant contained therein. (Id., § 3003.)

No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not. (Id., § 3007.)

Deeds must be executed within the State, of real property therein, in the presence of two witnesses, who must subscribe their names as such. (Id., § 3011.) In any other State, etc., of the United States, such deed may be executed according to the laws thereof. (Id., § 3012.)

See, also, forms Nos. 113, 114, and notes thereto.

No. 640.

Form of deed in the State of Pennsylvania.

Same as in form No. 574.

(Acknowledgment, as in forms Nos. 115, 116.)¹

1. See forms Nos. 115 and 116 and notes thereto.

No. 641.**Form of deed in the State of Rhode Island.**

(Pub. Stats. of Rhode Island, chap. 173, § 2.)

Same as in form No. 574.¹

1. Deeds of lands must be signed and sealed, acknowledged and delivered by the grantor, and recorded in the office of the town clerk of the town where the lands lie. (Pub. Stats. of Rhode Island, chap. 173, §§ 2-4.) See, also, forms Nos. 117-119, and notes thereto.

No. 642.**Form of deed in the State of South Carolina.**

(Gen. Stats. of South Carolina, § 1775.)

THE STATE OF SOUTH CAROLINA :

Know all men by these presents that I, A. B., of —, in the State aforesaid, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release, unto the said C. D., all that (here describe the premises), together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining; to have and to hold all and singular the premises before mentioned, unto the said C. D., his heirs and assigns, forever. And I do hereby bind myself, my heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said C. D., his heirs and assigns, against myself and my heirs, and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

Witness my hand and seal, this — day of —, in the year of our Lord —, and in the — year of the independence of the United States of America.¹

[L. S.]

1. The following form or purport of a release shall, to all intents and purposes, be valid and effectual to carry from one person to another or others the fee simple of any land or real estate, if the same shall be executed in the presence of and subscribed by two or more credible wit-

nesses: (here is inserted the above form of deed). *Provided*, this section shall be so construed as not to oblige any person to insert the clause of warranty, or to restrain him from inserting any other clause or clauses, in conveyances hereafter to be made, as may be deemed proper and advisable by the purchaser and seller, or to invalidate the forms heretofore in use within this State. (Gen. Stats. of South Carolina, § 1775.) See, also, forms Nos. 120, 121 and the notes thereto.

No. 643.

Form of deed in South Dakota.

Same as in form No. 574.¹

1. See form of deed in Dakota Territory, form No. 603.

No. 644.

Form of deed in State of Tennessee.

(Code of Tennessee, § 2820.)

For a deed in fee with general warranty :

“ I hereby convey to A. B. the following tract of land, (describing it), and I warrant the title against all persons whomsoever.”

Covenants of seizin, possession and special warranty :

“ I covenant that I am seized and possessed of the said land, and have a right to convey it, and I warrant the title against all persons claiming under me.”

For a quit claim deed :

“ I hereby quit claim to A. B. all my interest in the following land, (describing it).”

For a mortgage :

“ I hereby convey to A. B. the following land : (describing it); to be void upon condition that I pay,” etc.

For a deed of trust :

“ For the purpose of securing to A. B. a note of this date, due at twelve months, with interest from date (or, as the

case may be), I hereby convey to C. D., in trust, the following property, (describing it). And if the note is not paid at maturity, I hereby authorize C. D. to sell the property herein conveyed (stating the manner, place of sale, notice, etc.), to execute a deed to the purchaser, to pay off the amount herein secured, with interest and costs, and to hold the remainder subject to my order."¹

1. The following or other equivalent forms, varied to suit the precise state of facts, are sufficient for the purposes contemplated without further circumlocution (here are inserted the above forms, with headings as above given). (Code of Tennessee, § 2820.)

It is the clear intention of these provisions to reduce the forms of conveyancing to their simplest elements, and to give the largest meaning to granting words unless limited by the instrument itself. (*Daly v. Willis*, 5 Lea, p. 104.)

The conveyance shall be by deed, no matter in what manner or form drawn; and that it shall express the meaning of the person conveying. (2 Tenn. 261, 264.) It is not necessary to express any consideration in the deed. (*Id.* 264; *Whitby v. Whitby*, 4 Sneed, 473; *Taul v. Campbell*, 7 Yerg. 319, 338-9.)

As to what words are necessary to pass an estate to a married woman to the exclusion of the marital rights of her husband, see *Meredith v. Owen* (4 Sneed. 223); *Houston v. Embry* (1 id. 480); *Eaves v. Gillespie* (1 Swan, 128); *Thompson v. McKissick* (3 Humph. 631); *Hamilton v. Bishop* (8 Yerg. 33).

No deed of conveyance for lands, in what manner or form soever drawn, shall be good and available in law, as to strangers, unless the same be acknowledged by the vendor, or proved by two witnesses upon oath,

in the manner hereinafter prescribed, and registered by the register of the county where the land lies; and all deeds so done and executed shall be valid and pass estates in land, or right to other estate, without livery of seizin, attornment or other ceremony in the law whatever. (Code of Tennessee, § 2811.) See *Saunders v. Hackney* (10 Lea, p. 200), reviewing the cases as to conveyances. It was held by that case that a valid deed of conveyance might be executed in that State without the name of the grantor being subscribed thereto; as where the instrument was written by the grantor himself, his name being so inserted as to control the grant, and there is proof of the delivery to the grantee, or other evidence or circumstances to show that the signature was intended to be final, the question of intent being one of fact for the jury.

The use of private seals in written contracts, except the seals of corporations, is abolished, and the addition of a private seal to an instrument of writing hereafter made, shall not affect its character in any respect. (Code of Tennessee, § 2478.)

The seal of a corporation is *prima facie* evidence that it was placed there by proper authority, and that the instrument is the act of the corporation. (*Levering & Carncross v. The Mayor*, 7 Humph. 553.)

See, also, forms Nos. 127-130, and notes thereto.

No. 645.

Form of deed in State of Texas.

(Civ. Stats. of Texas, arts. 552, 553.)

THE STATE OF TEXAS, }
County of —.

Know all men by these presents, that I, —, of the — [give name of city, town or county], in the State aforesaid, for and in consideration of — dollars, to me in hand paid by —, have granted, sold and conveyed, and by these presents, do grant, sell and convey unto the said, —, of the [give name of city, town or county], in the State of —, all that certain [describe the premises]. To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said —, his heirs or assigns forever. And I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said —, his heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

Witness my hand this — day of —, 1—.¹

Signed and delivered in presence of —. —.

1. The following form, or the same in substance, shall be sufficient as a conveyance of the fee simple of any real estate with a covenant of general warranty, viz.: (here is inserted the above form). (Sayles' Texas Civil Statutes, art. 552.) See, also, *Wright v. Lancaster* (48 Tex. 250); *Threadgill v. Buttler* (60 id. 599); *McCown v. Wheeler* (20 id. 372); *Viser v. Rice* (33 id. 139).

No person shall be obliged to insert the covenant of warranty, or be restrained from inserting any clause or clauses in conveyances hereafter to be made, that may be deemed proper and advisable by the pur-

chaser and seller; and other forms, not contravening the laws of the land shall not be invalidated. (Sayles Texas Civil Statutes, art. 553.)

Every deed or conveyance of real estate must be signed or acknowledged by the grantor in the presence of at least two credible subscribing witnesses thereto; or must be duly acknowledged before some officer authorized to take acknowledgments, and properly certified to by him for registration. (Id., art. 554.)

From the use of the word "grant" or "convey," in any conveyance by which an estate of inheritance or fee simple is to be passed, the following

covenants, and none other, on the part of the grantor for himself and his heirs, to the grantee, his heirs and assigns, are implied, unless restrained by express terms contained in such conveyance: 1. That previous to the time of the execution of such conveyance the grantor has not conveyed the same estate, or any right, title or interest therein, to any person other than the grantee. 2. That such estate is, at the time of the execution of such conveyance, free from incumbrances. Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance. (Id., art. 557.)

The term "incumbrances" includes taxes, assessments and all liens upon real property. (Id., art. 558.)

The husband and wife shall join in the conveyance of real estate, the

separate property of the wife. (Id., art. 559.)

The homestead of a family shall not be sold and conveyed by the owner, if a married man, without the consent of the wife, to be evidenced by her joining in and signing her name to the conveyance and her separate acknowledgment thereof. (Id., art. 559.)

No private seal or scroll shall be necessary to the validity of a conveyance, except that of a corporation, nor shall the addition or omission of a seal in any way affect the force and effect of the same. (Id., art. 4487.)

Unsealed contracts in writing import a consideration in the same manner and as fully as sealed instruments have heretofore done. (Id., art. 4488.)

See, also, forms Nos. 131-133, and notes thereto.

No. 646.

Form of deed in Utah Territory.

(Comp. Laws of Utah, § 2610.)

Same as in form No. 574.

(Acknowledgment, as in form No. 134.)¹

1. Conveyances of lands, or of any estate or interest therein, may be made by deed, signed by the person from whom the estate or interest is intended to pass being of lawful age, or by his lawful agent or attorney, and by one or more credible witnesses, and acknowledged or proved, and recorded as provided by this act. (Comp. Laws of Utah, § 2610.)

A married woman may convey any

of her real estate, or any interest therein, by conveyance thereof, executed and acknowledged and certified in the same manner as provided in this act for other persons. (Id., § 2640.)

The word "seal" may include a scroll, printed or written, opposite the signature. (Id., §§ 2645, 2984.)

See, also, form No. 134, and notes thereto.

No. 647.**Form of deed in the State of Vermont.**

(Rev. Laws of Vermont, § 1922.)

Same as in form No. 574.¹

(Acknowledgment, as in form No. 139.)

1. Conveyances of land, or of an estate held in common or in joint estate or interest therein, may be made by deed, executed by a person having authority to convey the same, or by his attorney, and acknowledged and recorded as directed in this chapter. (Rev. Laws of Vermont, § 1922.)

tenancy, or to convey her real estate, other than homestead property. (Id., § 1924.)

A husband and wife may, by their joint deed, convey the real estate of the wife as she might do by her separate deed, if unmarried; but the wife shall not be bound by a covenant contained in such joint deed. (Id., § 1923.)

A public or private corporation, authorized to hold real estate, may convey the same by an agent appointed by vote for that purpose. (Id., § 1926.)

The wife of a man under guardianship may join with the husband's guardian to make partition of her real

Deeds and other conveyances of lands, or of an estate or interest therein, shall be signed and sealed by the party granting the same, and signed by two or more witnesses, and acknowledged by, etc. (Id., § 1927.)

See, also, form No. 139, and notes thereto.

No. 648.**Form of deed in the State of Virginia.**

(Code of Virginia, § 2437.)

This deed, made the — day of —, in the year —, between (here insert names of parties), witnesseth: That in consideration of (here state the consideration), the said — doth (or, do) grant unto the said —, all, etc. (here describe the property and insert covenants or any other provisions).

Witness the following signature and seal (or, signatures and seals).¹

A. B. [L. S.]

Sealed and delivered in presence of

C. D.

(Acknowledgment, as in form No. 140.)

1. A deed may be in the following inserted the above form of conveyance, or to the same effect: (here is inserted the above form of conveyance). (Code of Virginia, § 2437.)

Every such deed conveying lands shall, unless an exception be made therein, be construed to include all the estate, right, title, and interest whatever, both at law and in equity, of the grantor in or to such lands. (Id., § 2438.)

Whenever in any deed there shall be used the words: "The said grantor (or, the said —) releases to the said grantee (or, the said —) all his claims upon the said lands," such deed shall be construed as if it set forth that the grantor (or, releasor) hath remised, released, and forever quitted claim, and by these presents doth remise, release, and forever quit claim unto the grantee (or, releasee), his heirs and assigns, all right, title, and interest whatsoever, both at law and in equity, in or to the lands and premises granted (or, released), or intended so to be, so that neither he nor his personal representatives, his heirs or assigns, shall, at any time hereafter, have, claim, challenge, or demand the said lands and premises, or any part thereof, in any manner whatever. (Id., § 2439.)

A deed of lease may be made in the following form, or to the same effect: "This deed, made the — day of —, in the year —, between (here insert the names of parties),

witnesseth: That the said — doth (or, do) demise unto the said —, his personal representative and assigns, all, etc. (here describe the property), from the — day of —, for the term of —, thence ensuing, yielding therefor during the said term the rent of (here state the rent, and mode of payment). Witness the following signature and seal (or, signatures and seals.)" (Id., § 2440.)

A deed of trust to secure debts or indemnify sureties may be in the following form, or to the same effect: "This deed, made the — day of —, in the year —, between — (the grantor), of the one part, and — (the trustee), of the other part, witnesseth: that the said — (the grantor) doth (or, do) grant unto the said (the trustee), the following property (here describe it): In trust to secure (here describe the debts to be secured, or the sureties to be indemnified, and insert covenants or any other provisions the parties may agree upon). Witness the following signatures and seals (or, signature and seal)." (Id., § 2441.)

See, also, Id., §§ 2445-2457, as to covenants in deeds and their effect, and see form No. 140, and the note thereto.

No. 649.

Form of warranty deed in the State of Washington.

(Gen. Stats. of Washington, § 1424.)

The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration), in hand paid, convey and warrant to (here insert the grantee's name or names), the following described real estate

(here insert description), situated in the county of —, State of Washington.

Dated this — day of —, 18—.¹ —.

(Acknowledgment, as in form No. 141.)

1. Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his heirs and assigns, with covenants on the part of the grantee

1. That at the time of the making and delivery of such deed he was lawfully seized of an indefeasible estate in fee simple in and to the premises therein described, and had good right and full power to convey the same; 2. That the same were then free from all incumbrances; 3. That he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will

defend the title thereto against all persons who may lawfully claim the same; and such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at full length in such deed. (Gen. Stats. of Washington, § 1424.)

The use of private seals upon deeds, mortgages, etc., is abolished, and the addition of a private seal to any such instrument or contract in writing, hereafter made, shall not affect its validity or legality in any respect. (Id., § 1427.)

See, also, form No. 141, and note thereto.

No. 650.

Form of deed of bargain and sale in State of Washington.

(Gen. Stats. of Washington, § 1425.)

The grantor (here insert name or names and place of residence), for [and] in consideration of (here insert consideration), in hand paid, bargain, sell, and convey to (here insert the grantee's name or names) the following described real estate (here insert description), situated in the county of —, State of Washington.

Dated this — day of —, 1—.¹ —.

(Acknowledgment, as in form No. 141.)

1. Bargain and sale deeds for the conveyance of land may be substantially in the following form (here is inserted the above form of deed): Every deed in substance in the above form shall convey to the grantee, his heirs or other legal representatives,

an estate of inheritance in fee simple, and shall be adjudged an express covenant to the grantee, his heirs or other legal representatives, to wit, that any grantor was seized of an indefeasible estate in fee simple free from incumbrance, done or suffered

from the grantor, except the rents and services that may be reserved, as also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed; and the grantee, his heirs, executors, administrators and assigns, may, in any action, recover for breaches, as if such covenants were expressly inserted. (Gen. Stats. of Washington, § 1425.)

See, also, form No. 141, and notes thereto, and notes to last form, No. 649.

No. 651.

Form of quit claim deed in the State of Washington.

(Gen. Stats. of Washington, § 1426.)

The grantor (here insert name or names and place of residence), for the consideration (here insert consideration), convey and quit claim to (here insert grantee's name or names) all interest in the following described real estate, (here insert description), situated in the county of —, State of Washington.

Dated this — day of —, 1—.¹ —.

(Acknowledgment, as in form No. 141.)

1. Quit claim deeds may be in substance in the following form: (here is inserted the above form of deed). Every deed in substance in form prescribed in this section, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quit claim to the grantee, his heirs and assigns, in fee of all the then existing legal or equitable rights of the grantor in the premises therein described, but shall not extend to the after acquired title unless words are added expressing such intention. (Gen. Stats. of Washington, § 1426.)

See, also, forms Nos. 141, 649 and 650, and notes thereto.

No. 652.

Form of deed in State of West Virginia.

(Code of West Virginia, chap. 72, § 1.)

This deed, made the — day of —, in the year 1—, between (here insert names of parties), witnesseth: That in consideration of (here state the consideration), the said — doth (or, do) grant unto the said — all, etc. (here

describe the property, and insert covenants or any other provisions).

Witness the following signature and seal (or, signatures and seals).¹

(Signature and seal.)

(Acknowledgment, as in form No. 142.)

1. A deed may be made in the following form, or to the same effect: (here is inserted the above form of deed). (Code of West Va., chap. 72, § 1.)

Every such deed, conveying lands, shall unless an exception be made therein, be construed to include all the estate, right, title and interest whatever, both at law and in equity, of the grantor, in or to such lands. (Id., § 2.)

Whenever, in any deed, there shall be used the words, "The said grantor (or, the said —) releases to the said grantee (or, the said —) all his claims upon the said lands," such deed shall be construed as if it set forth that the grantor (or, releasor) hath remised, released, and forever quitted claim, and by these presents doth remise, release, and forever quit claim unto the grantee (or, releasee),

his heirs and assigns, all right, title, and interest whatsoever, both at law, and in equity, in or to the lands and premises granted (or, released), or intended so to be, so that neither he nor his personal representative, his heirs or assigns, shall, at any time thereafter have, claim, challenge, or demand the said lands and premises, or any part thereof, in any manner whatever. (Id., § 3.)

For forms of lease and of deed of trust to secure debts or indemnify sureties see form, No. 648, *note*, except substituting in the first form given in that note the words "the said — (the lessee paying to the said — (the lessor)" for word "yielding." (Id., §§ 4, 5.)

See, as to covenants and their effect, sections 12-24 of same chapter.

See, also, forms Nos. 142-144, and notes thereto.

No. 653.

Forms of warranty and quit claim deeds in State of Wisconsin.

(Stats. of Wisconsin, § 2208.)

A. B., grantor, of — county, Wisconsin, hereby (*) conveys and warrants to C. D., grantee, of — county, Wisconsin, for the sum of — dollars, the following tract of land in — county (here describe the premises.)

Witness the hand and seal of said grantor, this — day of —, 1—. ¹

In the presence of

— —
— —

— — [SEAL.]

— — [SEAL.]

(Acknowledgment, as in form No. 145.)

As above to (*) and from thence as follows: quitclaims to C. D., grantee (conclude as above).

1. Such deeds, when executed and acknowledged as required by law, shall, when of the first of the above forms, have the effect of a conveyance in fee simple to the grantee, his heirs and assigns of the premises therein named, together with all the appurtenances, rights and privileges thereto belonging, with a covenant from the grantor, his heirs and personal representatives, that he is lawfully seized of the premises; has good right to convey the same; that he guaranties the grantee, his heirs and assigns, in the quiet possession thereof; that the same are free from all incumbrance, and that the grantor, his heirs and personal representatives will forever warrant and defend the title and possession thereof

in the grantee, his heirs and assigns, against all lawful claims whatsoever; any exceptions to such covenants may be briefly inserted in such deed, following the description of the land; and when in the second of the above forms, shall have the effect of a conveyance in fee simple to the grantee, his heirs and assigns, of all right, title, interest and estate of the grantor, either in possession or expectancy, in and to the premises therein described, and all rights, privileges and appurtenances thereto belonging. (Stats. of Wisconsin, § 2208.) See *Messer v. Oestrich* (52 Wis. 684).

See, also, form No. 145, and note thereto.

No. 654.

Form of deed in the State of Wyoming.

(Rev. Stats. of Wyoming, § 1.)

Same as in form No. 574.¹

(Acknowledgment, as in form No. 146.)

1. Conveyances of land, or of any estate or interest therein, may be made by deed, signed and sealed by the person from whom the estate or interest is intended to pass, being of lawful age, or by his lawful agent or attorney, and acknowledged or proved and recorded as directed in this chapter, without any other act or ceremony whatever. (Rev. Stats. of Wyoming, § 1.)

A married woman may, by her deed or mortgage, convey her real estate in like manner as she might if

she were an unmarried woman. (Id. § 2.)

No covenant shall be implied in any conveyance of real estate, whether such conveyance contain special covenants or not. (Id., § 5.)

One witness is required to deed executed within the Territory. (Id., § 8.) When executed without the Territory it may be executed according to the laws of the State, etc., where executed (Id., § 11), or if executed without the Territory, according to the laws of the Territory, and ac-

known and acknowledged before a clerk of a court of record, county clerk or a commissioner appointed by the governor of the Territory for such purpose, it shall have the same effect as if executed and acknowledged within the Territory. (Id., § 12.) See, also, form No. 146 and note thereto.

Estrays.

See Towns.

CHAPTER XXI.

Forms Relating to Excise.

(Laws of N. Y. of 1892, chap. 401.)

- No. 655.** Oath of office of commissioner of excise.
 656. Bond of commissioner of excise.
 657. Record book of board of excise.
 658. Subpœna issued by board of excise.
 659. Oath to witness before board of excise.
 660. Annual report of board of excise.
 661. Hotel license.
 662. Saloon liquor license.
 663. Saloon ale and beer license.
 664. Storekeeper's license.
 665. Druggist's license.
 666. Application for license.
 667. Bond to accompany such application.
 668. Consent of authorities having charge and control of park, to granting of license.
 669. Writ of *certiorari* to board of excise on refusal to grant license.
 670. Return to such writ.
 671. Permission of board of excise to carry on business on other premises.
 672. Permission of such board to sell, transfer and assign license
 673. License by comptroller to common carrier.
 674. Complaint before board of excise.

No. 655.**Oath of office of commissioner of excise.**

(Laws of N. Y. of 1892, chap. 401.)

COUNTY OF —, ss.:

I, A. B., do solemnly swear (or, affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of (*) commissioner of excise of the town (or, city) of —, in said county, according to the best of my ability.¹

[And I do further solemnly swear (or, affirm) that I have not, directly or indirectly, paid, offered, or promised to pay, contributed, or offered, or promised to contribute, any money, or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding of any such vote.]²

A. B.

(Jurat, as in form No. 32.)

1. Every commissioner of excise is required by section 7 of chapter 401 of the Laws of New York of 1892, within ten days after his appointment or election, and before entering upon the duties of his office, to take and file with the city clerk of his city, or with the town clerk of his town, the constitutional oath of office.

See further as to this oath and the officers before whom it may be taken and subscribed, N. Y. R. S. 119; 7th ed. 367; *Foot v. Stiles* (57 N. Y. 399).

2. This clause, in brackets, is required by article 12 of the Constitution of New York State, as amended in 1875, to be inserted in the case of all officers who shall have been chosen at any election; and should be contained in the oaths taken by commissioners of excise in towns.

By section 16 of chapter 569 of Laws of New York of 1890, known as the town law, there shall be three commissioners of excise in each town, composing the board of excise

of each town, who shall be divided into three classes, each of whom shall hold his office three years. No supervisor, town clerk, justice of the peace or trustee of a village shall be a commissioner of excise.

By section 11 of the town law, they are to be elected at the annual town meeting in each town, by ballot.

See, also, section 5 of the excise law, as to appointment of commissioners of excise in the cities of the State by the mayor of the city. That section does not apply to any city the charter of which provides for the election of commissioners of excise by ballot, and nothing in that law contained is to be construed to repeal the provisions of any city charter providing for the selection of commissioners of excise.

Any commissioner elected in a city to such office must, under the last mentioned provisions, include said clause in his oath of office.

See N. Y. State constitution of 1894, Art. 13, § 1, as to official oaths. Also see § 10 of chapter 681 of Laws of N. Y. of 1892, as amended by chapter 313 of Laws of 1893, and § 13 of same chapter, and see chapter 112 of Laws of 1896, as amended by chapter 312 of Laws of 1897 and other acts, by which chapter 401 of Laws of 1892 is repealed, and see *People ex rel. Bishop v. Palen* (74 Hun, 289).

No. 656.

Bond of commissioner of excise.

(Laws of N. Y. of 1892, chap. 401, § 7.)

As in form No. 302, to (*), substituting the words "the city (or, town) of —, in the county of" for the words "The People of the State of New York," and from thence

as follows: if the above bounden A. B. shall faithfully perform all the duties of the office of commissioner of excise, in the said town (or, city) of —, to which he has been elected (or, appointed), and shall promptly pay over, in accordance with law, all moneys received by him as such commissioner, then the preceding obligation to be void, otherwise to be and remain in full force and virtue.¹

A. B. [L. S.]

C. D. [L. S.]

E. F. [L. S.]

Sealed and delivered in the presence of

G. H.

(Acknowledgment, as in form No. 89.)

(Justification of sureties, as in form No. 220.)

(Indorsed.)

I hereby approve of the within bond, as to its form and as to the sufficiency of the sureties therein.

O. F.,

Mayor of the city of —.

(or, Supervisor of the town of —), in the county of —.

1. See section 7 of chapter 401 of Laws of New York of 1892, as to this bond, which is required by that section to be filed with the city clerk of the city of the commissioner, or with the town clerk of his town, within ten days after his appointment or election, and before entering upon the duties of his

office. As to the penalty of said bond, which shall be at least \$1,000, see same section.

See section 6 of chapter 112 of Laws of N. Y. of 1896, as amended by chapter 312 of Laws of N. Y. of 1897. By said chapter 112, chapter 401 of Laws of 1892 is repealed.

No. 657.

Record book of board of excise.

(Laws of N. Y. of 1892, chap. 401, § 12.)

Record book of the board of excise of the town (or, city) of —, in the county of —.¹

| Name of licensee. | Locality of premises licensed. | Character and class of license. | Date of granting same. | Amount of license fee. | Date of payment thereof. | Names and residences of sureties on bond of licensee |
|-------------------|--------------------------------|---------------------------------|------------------------|------------------------|--------------------------|--|
| | | | | | | |

1. See section 12 of chapter 401 of this book, which is required by that the Laws of New York of 1892, as to section to be open to the inspection

of the public when not necessarily in use by the board, and, if of a board of excise of a city, must be kept at its office, and if of a board of excise of a town, must be kept in the office of the town clerk of the town. See section 15 of chapter 112 of Laws of 1896, as amended by chapter 312 of Laws of 1897. By said chapter 112, chapter 401 of Laws of 1892 is repealed.

No. 658.

Subpœna to be issued by board of excise.

(Laws of N. Y. of 1892, chap. 401, § 13.)

The People of the State of New York, to M. N.:

We command you (and, each of you) that all business and excuses being laid aside, you be and appear before the board of excise of the town (or, city) of —, in the county of —, at —, in said town, forthwith (or, at — o'clock in the — noon, of the — day of —, 1—), to testify in the matter of, etc. [and that you bring with you and then and there produce and exhibit (describing books and papers)], and hereof fail not at your peril.

Witness A. B., C. D. and E. F., commissioners constituting the board of excise of the said town of —, this — day of —, 1—.¹

A. B.,

Chairman (or, clerk).

1. See section 13 of chapter 401 of the Laws of New York of 1892, as to this subpœna and mode of service thereof, and fees of witnesses to be paid. Said chapter 401 of Laws of 1892 is repealed by chapter 112 of Laws of 1896.

No. 659.

Oath to witness before board of excise.

(Laws of N. Y. of 1892, chap. 401, § 13.)

The evidence which you shall give upon the investigation before this board, in the matter of, etc., shall be the truth, the whole truth and nothing but the truth, so help you God.¹

1. See section 13 of chapter 401 of the Laws of New York of 1892, as to this oath, which may be administered by any member of the board or by its clerk. See note to last form.

No. 660.

Annual report of board of excise.

(Laws of N. Y., of 1892, ch. 404, § 16.)

To ———.¹

The board of excise of the town (or, city) of ———, in the county of ———, hereby makes its annual report, pursuant to (section 16 of the excise law of the State of New York) for the calendar year 1——, as follows:

That the number of licenses issued by said board during the year 1—— is (stating same).

That the number of hotel licenses issued by said board during the said year is (stating same). That the number of saloon liquor licenses issued by said board during said year is (stating same) and so on (stating the number of each kind of license issued, in like manner).

That the amount received for licenses during said year is the sum of ———.

That the expenses of said board during said year have been as follows: (stating generally the nature and amount of such expenses and the items thereof).

That the following proceedings have been had by the said board, during said year, under the provisions of the excise law of the State of New York.

All of which is respectfully submitted.

Dated ———, 1——.²

(Signatures of commissioners.)

Board of excise of the town of ———, in
the county of ———.

1. The statute, section 16 of chapter 401 of Laws of New York of 1892, does not state to whom such report shall be addressed. Under the provisions of chapter 274 of Laws of 1860, which act is repealed by chapter 401 of Laws of 1892, the annual reports of the excise boards were to be made to the boards of supervisors of their respective counties.

2. See the section referred to in note 1 to this form as to this report, which is to be made annually by each board of excise, on the first Monday

of January for the then preceding 1860 was required to be verified, but calendar year, and filed with the no such verification is required by the county clerk of the county. The report to be made under the act of act of 1892. See as to repeal of chapter 401 of 1892, note 1 to form No. 658.

No. 661.

Hotel license in the State of New York.

(Laws of N. Y. of 1892, § 19, subd. 1.)

HOTEL LICENSE.

License expires —, 1—.

No. —.

The board of excise of the town (or, city) of —, in the county of —, hereby certifies that being satisfied that A. B. (and C. D.), of the said town (or, city), is (or, are) of good moral character, and is (or, are) possessed of the qualifications required by law (including the provisions of section 18 of the act hereinafter referred to), to keep an inn, tavern or hotel at the place where such applicant (or, applicants) propose(s) to keep the same, as hereinafter stated, and that (each) such applicant (or, applicants) may lawfully be licensed to carry on the business sought to be licensed upon the premises specified therefor in the application; and said applicant (or, applicants) having complied with section 20 of the act of the legislature hereinafter mentioned:

Now, therefore, a hotel license is granted to said A. B. (and C. D.), permitting sales in such inn, tavern or hotel, located at and in the premises, No. — — street, in the said city (or, at (stating place), in the said town of —), of strong or spirituous liquors, wines, ale or beer in quantities less than five gallons at a time, to be drank on or off the licensed premises, pursuant to the provisions of the act of the legislature of the State of New York, passed April 30, 1892, entitled "An act to revise and consolidate the laws regulating

the sale of intoxicating liquors," and the acts amendatory thereof.¹

Witness our hands this — day of —, 1—.

E. F.,

G. H.,

I. J.,

Commissioners of Excise of the
town (or, city) of —

C. M.,
Clerk.

This license must be conspicuously posted on the premises licensed.

¹ See sections 18, 19, 21 and 22 of chapter 401 of Laws of New York of 1892, as to form of licenses generally; and as to requisites for granting license, and see section 17 of same chapter as to meetings of boards of excise for the purpose of receiving, considering, and in proper cases granting licenses, and of transacting any other business properly coming before the board. See as to repeal of chapter 401 of Laws of 1892, note 1 to form No. 658.

No. 662.

Form of saloon ale and beer license in New York State.

(Laws of N. Y. of 1892, chap. 401, § 19, subd. 3.)

SALOON LICENSE, ALE AND BEER ONLY.

License expires —, 1—.

No. —.

The board of excise of the town (or, city) of —, in the county of —, hereby certifies that being satisfied that A. B. (and C. D.), of, etc., is (or, are) of good moral character, and is (or, are) possessed of the qualifications required by law (including section 18 of the act hereinafter mentioned), for a saloon ale and beer license at the place where such applicant (or, applicants) proposes (or, propose) to keep the same, as hereinafter stated, and that (both of) such applicants (or, such applicant) may lawfully be licensed to carry on the business sought to be licensed upon the premises specified therefor in the application; and said applicant (or, applicants) having complied with section 20 of the act of the legislature hereinafter mentioned:

Now, therefore, a saloon ale and beer license is granted to said A. B. (and C. D.) permitting sales in such saloon, located at and in the premises, No. — — street, in the said city of — (or, (name place), in the said town of —,) of ale and beer only, in quantities less than five gallons at a time to be drank on or off the licensed premises, pursuant to the provisions of the act of the legislature of the State of New York, passed April 30, 1892, entitled "An act to revise and consolidate the laws regulating the sale of intoxicating liquors," and the acts amendatory thereof.¹

Witness our hands this — day of —, 1—.

A. B.,

C. D.,

E. F.,

Commissioners of Excise of the
town (or, city) of —.

M. N.,
Clerk.

This license must be conspicuously posted on the premises licensed.

1. See note 1 to form No. 661, and sections therein referred to, and see note 1 to form No. 658 as to repeal of chapter 401 of Laws of New York of 1892.

No. 663.

Form of saloon liquor license in New York State.

(Laws of N. Y. of 1892, chap. 401, § 19, subd. 2.)

Same as in form No. 662, inserting therein as a heading, "Saloon liquor license," in place of "Saloon license, ale and beer only," and the words "saloon liquor license" in place of the words "saloon ale and beer license," in the body of said form, and the words "strong and spirituous liquors" in place of the words "ale and beer only."

Witness, etc., as in form No. 662.¹

(Signatures, etc., as in form No. 661.)

—,
Clerk.

1. See note 1 to form No. 661.

No. 664.**Form of storekeeper's license in New York State.**

(Laws of N. Y. of 1892, chap. 401, § 19, subd. 4.)

Same as in form No. 661, substituting as a heading, "Storekeeper's license" for "Hotel license," and the words "not to be drunk on the licensed premises" for the words "to be drunk on or off the licensed premises," in the body of said form,¹ and adding to said form the words "This license authorizes the sale of strong and spirituous liquors, wines, ale and beer, not to be drunk on the premises."²

Witness, etc., as in form No. 661.

—, (Signatures, etc., as in form No. 662.)
Clerk.

1. See note to form No. 661, and the sections therein referred to.

2. See section 22 of chapter 401 of the Laws of New York of 1892.

See note 1 to form No. 658 as to repeal of chapter 401 of Laws of New York of 1892.

No. 665.**Form of druggist's license in New York State.**

(Laws of N. Y. of 1892, chap. 401, § 19, subd. 5.)

DRUGGIST'S LICENSE.

License expires —, 1—.

No. —.

The board of excise of the city (or, town) of —, in the county of —, hereby certifies that being satisfied that A. B. (and C. D.) is (or, are) of good moral character, and is (or, are) possessed of the qualifications required by law (including section 18 of the act hereinafter mentioned), for a druggist's license, at the place where such applicant proposes (or, such applicants propose) to keep a drug store, as hereinafter stated, and that (both of) such applicant(s) may lawfully be licensed to carry on the business sought to be licensed upon the premises specified therefor in the application; and said applicant (or, applicants) having complied with section 20 of the act of the legislature hereinafter mentioned:

Now, therefore, a druggist's license is granted to said A. B. (and C. D.), permitting sales in such drug store, only upon a physician's written prescription, to be but once used, located at and in the premises (describing them), in the said city (or, town) of —, in the county of —, of strong and spirituous liquors, wines, ale or beer, in quantities less than five gallons at a time, not to be drunk on the licensed premises pursuant to the provisions of the act of the legislature of the State of New York, passed April 30, 1892, entitled "An act to revise and consolidate the laws regulating the sale of intoxicating liquors," and the acts amendatory thereof.¹

This license authorizes the sale by the licensee, while a licensed pharmacist, of strong and spirituous liquors, wines, ale and beer not to be drunk on the premises, and to be sold upon the written prescription of a physician, to be but once used.²

Witness our hands this — day of —, 1—.

A. B.,

C. D.,

E. F.,

Commissioners of Excise of the
city (or, town) of —.

M. N.,
Clerk.

This license must be conspicuously posted on the premises licensed.

1. See note 1 to form No. 661, and the sections therein referred to.

2. See section 22 of chapter 401 of Laws of New York of 1892.

See note 1 to form No. 658 as to repeal of chapter 401 of Laws of New York of 1892.

No. 666.

Application for a license in New York State.

(Laws of N. Y. of 1892, chap. 401, § 20.)

To the Board of Excise of the city (or, town) of —, in the county of —:

The application of A. B. (and C. D.; or, of A. B. & Co., a partnership composed of A. B. and C. D.; or, of the A. B. Co.), respectfully shows:

1. That the said A. B., etc., is (or, are each) over twenty-one years of age, a citizen of the United States, and a resident of this State, and of good moral character.

2. That the name (or, names) of every person interested in this application is (or, are) as follows: (stating them) [or, that said — is authorized by the said A. B. Co. to make this application, by a resolution of the directors of said corporation, of which he, said —, is the president, etc., duly passed at a meeting of said directors, held at, etc., on, etc. (or, state other facts in regard to the authority of the applicant.)]¹

3. That the premises where the business hereinafter mentioned is to be carried on are situated in said city (or, town) and are known by the street number — — street (or, designate same so as reasonably to indicate the locality thereof).

4. That the license of no former licensee of the above mentioned premises, sought to be licensed, has been annulled or revoked (or, that the license of M. F., a former licensee, the above mentioned premises was revoked by the board of excise of said town of —, on or about the — day of —, 1—, but that said M. F. has not and will not have any interest in the business now sought to be licensed, during the continuance of such license.)²

[That said A. B. (and C. D.) is (or, are) a duly licensed pharmacist (or, pharmacists)].³

[That said A. B. (and C. D.) has (or, have) in the inn, tavern or hotel for which a license is hereby sought, — bedrooms for guests.]⁴

Wherefore your petitioner (or, petitioners) applies (or, apply), pursuant to section 19 of the excise law of the State of New York, for a hotel license (or, a saloon liquor license; or, a saloon ale and beer license; or, a storekeeper's license; or, a druggist's license).⁵

Dated —, 1—

A. B.
C. D.,
or, A. B. & Co.,
or, The A. B. Co.,
by C. D., its —.

(CITY AND) COUNTY OF —, ss.:

A. B. (or, A. B. and C. D.; or, C. D.), being (severally) duly sworn, says (or, say, and each for himself says): That he is (or, they are) the applicant (or, applicants) (or, that he is the — of the A. B. Co., the applicant) named in the foregoing application, by him subscribed, and that said application is true.

(Signatures of affiant or affiants.)

(Jurat, as in form No. 32.)

1. See subdivision 1 of section 20 of chapter 401 of Laws of New York of 1892, as to this statement.

2. See section 18 of same statute, as to this statement.

3. This clause is to be inserted in an application for a druggist's license. (Same chapter, § 19, subd. 5.)

4. This clause is to be inserted in an application for a hotel license. (Id., § 19, subd. 1.)

5. See section 20 of chapter 401 of the Laws of New York of 1892, subdivision 1, as to this application, which is to be presented to and filed with the board, before any license can be granted by them.

See, also, for form of bond required by subdivision 2 of same section, to be presented and filed therewith, the next form, No. 667.

See note 1 to form No. 658 as to repeal of chapter 401 of Laws of 1892.

No. 667.

Bond of applicant, to be filed with application, form No. 666.

(Laws of N. Y. of 1892, chap. 401, § 20, subd. 2.)

Know all men by these presents, that we, A. B. (or, the A. B. Company), as principal (or, A. B. and C. D., as principals), and E. F. and G. H., residents of the city (or, town) of —, in the county of — and State of New York, as sureties, are held and firmly bound unto the city (or, town) of —, in the county of —, and State of New York, in the penal sum of two hundred and fifty dollars, to be paid to the said city (or, town); for which payment well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, dated the — day of —, one thousand — hundred and —.

Whereas, the said A. B. (and C. D.) has (or, have) (or, the A. B. Company has) applied to the board of excise of the

said city (or, town) of — for a hotel license (or, a saloon liquor license ; or, a saloon ale and beer license ; or, a druggist's license ; or, a storekeeper's license), under and pursuant to "An act to revise and consolidate the laws regulating the sale of intoxicating liquors," passed April 30, 1892, known as the excise law, and the acts amendatory thereof :

Now, therefore, the condition of this obligation is such, that if the license applied for shall be granted, the applicant (or, applicants) will not, while the business so licensed shall be carried on, suffer the licensed premises to become disorderly, or suffer any gambling therein, or in any out-house, yard or garden belonging thereto, and will not violate any provision of the excise law, then this obligation to be void ; else to remain in force.¹

(Signatures and seals of obligors.)

Signed, sealed and delivered in presence of

M. N.

(CITY AND) COUNTY OF —, ss.:

On this — day of —, A. D. 1—, before me personally came A. B. (and C. D. ; or, C. D.), E. F. and G. H., to me known to be the individuals described in and who executed the foregoing bond, and severally acknowledged that they executed the same for the uses and purposes therein mentioned.

(Signature of officer.)

(Official title.)

(CITY AND) COUNTY OF —, ss.:

E. F. and G. H., of the city (or, town) of —, in said county, being duly sworn, each for himself doth depose and say, that he is worth the sum of five hundred dollars above his just debts and liabilities, and his property exempt by law from levy and sale by virtue of an execution, and that he resides in the said city (or, town) of — and State aforesaid.

E. F.

G. H

(Jurat, as in form No. 32.)

We, the undersigned, commissioners of excise of the city (or, town) of —, do hereby approve of the above bond both as to its form and as to the sufficiency of the sureties therein.

Dated at the city (or, town) of —, this — day of —, 1——.¹

(Signatures of commissioners.)

Commissioners.

1. See subdivision 2 of section 20 of chapter 401 of Laws of New York of 1892, as to this bond, which is to

be presented to and filed with the application, form No. 666.

See note 1 to form No. 658 as to repeal of chapter 401 of Laws of 1892.

No. 668.

Consent of authorities having charge and control of park, to issuing of license.

(Laws of N. Y. of 1892, chap. 401, § 20, subd. 3.)

We, the undersigned (insert official description), having charge and control of the (naming park) in the city (or, town) of —, in the county of —, do hereby consent, pursuant to the provisions of section 20 of the excise law of the State of New York, to the granting of a license to A. B., etc., to sell spirituous liquors, wines, ale or beer, to be drunk on the premises (describing them) situated in the public park, called the — park in said city (or, town).

Witness our hands at said city, etc., this — day of —, 1——.¹

Signature.

(Official description)

(Acknowledgment, as in form No. 89.)

1. See subdivision 3 of section 20 of chapter 401 of Laws of New York of 1892, as to this consent, which is to be presented to and filed with the appli-

cation in the case mentioned therein.

See note 1 to form No. 658 as to repeal of chapter 401 of Laws of New York of 1892.

No. 669.

Writ of certiorari to board of excise on refusal to grant license.

(Laws of N. Y. of 1892, chap. 401, § 24.)

The People of the State of New York, on the relation of C. D., to A. B., E. F., and G. H., commissioners composing the board of excise of the city of —, in the county of —.

Whereas, we have been informed, by the affidavit (or, verified petition) of I. J., dated on the — day of —, 1—, that certain proceedings were had before you, to wit: (state the proceedings of which complaint is made), and we being willing, for certain reasons, to be certified of such proceedings, if any such were had before you, do command and strictly enjoin you that you do certify and return those proceedings, with all things appertaining thereto, within twenty days after the service upon you of this writ, at the office of the clerk of the county of — (or, name other clerk's office) under your hand, as fully and amply as the same remain before you, so that our (Supreme) Court may further cause to be done thereupon what of right, and according to law, ought to be done, and have you then there this writ.¹

Witness, etc. (teste).

J. L.,

[L. S.]

Clerk.

G. H., Attorney for —.

(Indorsed.)

Allowed this — day of —, 1—.

A. F.,

Judge (or, Justice), etc.

1. See section 24 of chapter 401 of Laws of New York of 1892, as to this writ, which may be issued in cities of over thirty thousand inhabitants, and as to the courts, etc., by which it may be issued and the return to be made thereto.

Generally as to writ of *certiorari* to review, see sections 2129-2134 of New York Code of Civil Procedure.

See note 1 to form No. 658 as to repeal of chapter 401 of Laws of New York of 1892.

No. 670.

Return to writ of certiorari, form No. 669.

(Laws of N. Y. of 1892, chap. 401, § 24.)

— COURT:

In the matter of, etc.,

The return of —, commissioners composing the board of excise of the city of —, in the county of —, to the writ of *certiorari*, (a copy of) which is hereto annexed.

By virtue of and in obedience to the writ of *certiorari*, (a copy of) which is hereto annexed, and to us directed, we do hereby certify and return to the (Supreme) Court, that we have annexed hereto, and file herewith a transcript, certified by us, of the proceedings, and a statement of the other matters specified in and required by said writ, including copies of all papers on which our action was based, and a statement of our reasons for refusing to grant such application.

In witness whereof, we have hereunto set our hands and seals, this — day of —, 1——.¹

(Signatures and seals,

Board of Excise of the city of —.

1. See note 1 to form No. 669, and section 24 of chapter 401 of the Laws of New York of 1892, as to this return and its contents. If the court shall, upon the hearing, determine that such application for a license has been by such board arbitrarily de-

nied, or denied without good or valid reasons therefor, such court may make an order commanding such board of excise to grant such application, and to issue a license to such applicant upon the payment of the proper license fee. (§ 24, *supra*.)

See note 1 to form No. 658 as to repeal of chapter 401 of Laws of N. Y. of 1892.

No. 671.

Permission of board of excise to carry on business on other premises.

(Laws of N. Y. of 1892, chap. 401, § 21, subd. 1.)

Whereas, a (hotel) license was heretofore granted to A. B. (or, A. B. & Co.; or, the A. B. Co.), to carry on the business of selling in the inn (or, tavern; or, hotel) kept by him (or

by them; or, by said corporation), at the (city) of —, in the county of —, at (describing premises) [and known as, etc.], strong and spirituous liquors, wines, ale or beer, in quantities of less than five gallons, to be drunk on or off the said licensed premises, which license bears date on the — day of —, 1—; and whereas, the said A. B., etc. (*), is (or, are) about to change the location of their said hotel, etc., from its said present location to (describing new location), in said city (or, town), and has (or, have) applied to this board for permission to carry on such business at the last-mentioned place :

Now, therefore, permission is hereby given to said A. B., etc., pursuant to the provisions of section 26 of the excise law of the State of New York, to carry on the said business at (stating new location), during the balance of the term of said license, upon the discontinuance of the licensed business upon the said premises originally licensed, during the term of said license.

Witness our hands at the city (or, town) of —, this — day of —, 1—.¹

(Signatures of commissioners.)

Board of Excise of the town (or, city) of —.

1. See subdivision 1 of section 26 York of 1892, as to this permission of chapter 401 of the Laws of New York and its effect.

No. 672.

Permission of board of excise to sell, assign and transfer license.

(Laws of N. Y. of 1892, chap. 401, § 26, subd. 2.)

As in last form No. 671, to (*), and from thence as follows: has made application to this board for leave to sell, assign and transfer such license to C. D., etc., during the term for which it was granted:

Now, therefore, permission is hereby given, pursuant to the provisions of section 26 of the excise law of the State of New York, to sell, assign or transfer the said license to the said C. D., etc., who may thereupon carry on such busi-

ness upon the said licensed premises during the balance of the term of such license, with the same rights and liabilities, and upon the same conditions, except as to the payment of a license fee, as if this permission were an original license therefor for the balance of such term.

Witness, etc., as in last form No. 671.¹

(Signatures, etc., as in last form.)

1. See subdivision 2 of section 26 of chapter 401 of the Laws of New York of 1892, as to this permission, which is to be granted only upon the same conditions as upon the granting of an original license of the same kind to the person or persons so permitted to carry on such business upon such premises for the period of such permission. This permission is required by that section to be posted, together with the original license, for the balance of such term in the same manner as an original license. See note 1 to form No. 658, as to repeal of chapter 401 of Laws of New York of 1892.

No. 673.

License by comptroller to common carrier.

(Laws of N. Y. of 1892, chap. 401, § 30.)

STATE OF NEW YORK, }
Comptroller's office, } ss.:

I, A. M., comptroller of the State of New York, do hereby, pursuant to the provisions of section 30 of the excise law of the State of New York, license A. B. (and C. D.; or, the A. B. Company) (he) having complied with the terms, conditions and restrictions imposed by me and required by said act for the term of one year from the date of this license, to sell upon the boat — (or, upon the cars of said company) strong or spirituous liquors, wines, ale or beer, in quantities less than five gallons, to the passengers upon said boat (or, upon the cars of said company) while in transit, to be drank on or off said boat (or, cars) without license by any board of excise.

Witness my hand and the seal of said State, at the city of Albany, on this — day of —, in the year 1—. ¹

[SEAL.]

A. M.,
Comptroller.

1. See section 30 of chapter 401 of the Laws of New York of 1892, as to this license, and the terms, etc., upon which it shall be granted. See note 1 to form No. 658, as to repeal of chapter 401 of Laws of N. Y. of 1892.

No. 674.

Complaint before board of excise.

(Laws of N. Y. of 1892, chap. 401, § 42.)

To the Board of Excise of the city (or, town) of —, in the county of —:

The complaint of E. F. respectfully shows (upon information and belief) that he resides in the city (or, town) of —, in the county of —. That G. H., who has been licensed by your board to sell in the saloon kept by him at (stating place), in said city (or, town) [known as the —], by a saloon ale and beer license to sell ale and beer only, has violated the provisions of the excise law of the State of New York by selling (or, offering for sale) strong and spirituous liquors, at his said saloon, since the issuing of such license, and on or about the — day of —, 1—, and on other days previous and subsequent thereto¹ (or, state, in like manner, other violations of the statute).

E. F.,
Complainant.

— CITY AND COUNTY, ss.:

E. F., of —, being duly sworn, says, that he is the complainant named in the foregoing complaint, subscribed by him; that the said complaint is true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

E. F.

(Jurat, as in form No. 32.)

1. See section 42 of chapter 401 of Laws of New York of 1892, as to this complaint and proceedings thereupon. See note 1 to form No. 658, as to repeal of chapter 401 of Laws of N. Y. of 1892.

CHAPTER XXII.

Forms of Extradition.

No. 675. Affidavit in extradition proceeding.

676. Warrant by the governor for surrender of fugitive from justice.

677. Commitment of fugitive from justice, under extradition treaty, by United States commissioner.

678. Warrant of secretary of State for extradition of fugitive from justice.

No. 675.***Affidavit in extradition proceeding.***

STATE OF (NEW YORK), } *ss.:*
 — *county,*

E. F., of, etc., being duly sworn, says: That M. N. is a fugitive from justice from the State of (New Jersey), in which State he stands charged on oath with the commission of a felony, committed in that State, to wit (stating the facts constituting the crime with which he stands charged), which said acts are by the laws of said State of — a felony; or, a crime.

That said charge (of which a copy is hereto annexed)¹ was made on or about the — day of —, 1—, before (stating court or magistrate).

That the said M. N. has fled from the said State of (New Jersey), and has taken refuge in this State of (New York), from the laws and justice of the said State of (New Jersey).

And deponent prays that the said M. N. may be arrested and held in custody by the proper authorities of the State of (New York), until the proper authorities of the said State of (New Jersey) shall have proper and sufficient time to require, in manner and form as the law directs, the body of said N. from the executive and authorities of the State of (New York), and until the said executive of said last above

named State shall make his warrant of surrender for the surrender of the body of said N., to the end that he may be taken to the State of (New Jersey), and dealt with as law and justice may require.²

E. F.

(Jurat, as in form No. 32.)

1. It is better to annex a copy of the charge, although not, it seems, absolutely necessary. (Matter of Heyward, 1 Sandf. 701.)

2. To enable a magistrate, under the act of 1839, to arrest and examine an alleged fugitive from justice, it must be shown by a complaint in writing, under oath, that a crime has been committed in the foreign State, that the accused has been charged in such State with the commission of such crime, and that he has fled from

such State and is found here. These facts are to be distinctly alleged. It is not sufficient that they may be inferred from what is stated. (Matter of Heyward, 1 Sandf. 701, 707.)

See, also, Matter of Leland (7 Abb. Pr. N. S. 64); Matter of Heilboun (1 Park. Cr. 429); Leary's case (6 Abb. N. C. 43); People, *ex rel.* Jourdan, v. Donohue (84 N. Y. 438); Matter of Scrafford (59 Hun, 320), among other cases, upon this subject.

No. 676.

Warrant by the governor for surrender of fugitive from justice.

A. M., governor of the State of (New York), to the sheriff of the county of —, and the sheriffs, constables and other peace officers of the several counties in the said State:

Whereas, it has been represented to me, by the governor of the State of (Connecticut) that J. J. stands charged with the crime of theft, (or, of breaking and entering the — Bank, and stealing the money thereof; or, state other facts constituting the crime) committed in the county of (Middlesex), in said State (which said acts are made criminal by the laws of that State),¹ and that he has fled from justice in that State, and has taken refuge in the State of (New York); and the said governor of the State of (Connecticut) having, in pursuance of the Constitution and laws of the United States, demanded of me that I shall cause the said J. J. to be arrested and delivered to W. P. C. and L. S. (or, into the custody of —, sheriff of the county of —, in said State),

who are (or, is) duly authorized to receive him into their (or, his) custody and convey him back to the said State of (Connecticut).

And whereas, the said representation and demand is accompanied by affidavits, complaint and warrant, whereby the said J. J. is charged with the said crime, and with having fled from the said State, and taken refuge in the State of (New York), which are certified by the said governor of (Connecticut) to be duly authenticated:

You are, therefore, required to arrest and secure the said J. J., wherever he may be found within the State, and to deliver him into the custody of the said W. P. C. and L. S. [or, etc. (as above)], to be taken back to the said State from which he fled, pursuant to the said requisition.

Given under my hand and the privy seal of the State,
[SEAL] at the city of — this — day of — in the
year one thousand — hundred and —.²

A. M.,
Governor.

1. If a crime at common law is stated, or the facts constituting one, these words, in parenthesis, need not be inserted.

2. See *People, ex rel. Jourdan, v. Donohue* (84 N. Y. 438), from which case this form is taken, generally as to form of warrant.

It is not necessary to state therein the facts constituting the alleged crime. (Id.)

The Constitution of the United States provides (art. 4, § 3) that a person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime.

To give the governor of a State jurisdiction to issue his warrant for rendition, under the above provision,

of a fugitive from justice of another State, the fugitive must be demanded by the executive of the latter State, a copy of the indictment or affidavit before a magistrate charging the offense must be produced, and such copy must be certified to be authentic by the executive. (*Soloman's case*, 1 Abb. Pr. N. S. 347.)

An affidavit sworn before a justice of the peace, and a certificate by the executive that he is such officer, and that his attestation is in due form, is not sufficient in this respect. (Id.)

See, also, *Matter of Clark* (9 Wend. 212); *Matter of Rutter* (7 Abb. Pr. [N. S.] 67); *People v. Wright* (2 Cai. 213); *People, ex rel. Lawrence, v. Brady* (56 N. Y. 182); *People, ex rel. Draper, v. Pinkerton* (77 id. 245, aff'g S. C., 17 Hun, 199); *Matter of Henzel* (3 Month. L. Bul. 90); *Adriance v. Lagrave* (59 N. Y. 110; S. C., 17 Am. Rep. 317, rev'g S. C., 1 Hun, 689).

State v. Perry (22 Alb. L. J. 513); *Ex parte Smith* (3 McLean, 121); *Re Doo Wood* (18 Fed. Rep. 898); *Ex parte Morgan* (20 id. 298); *Ex parte Brown* (28 id. 653); *Ex parte Reggel* (114 U. S. 642); U. S. Rev. Stat., §§ 5278, 5279.

The constitutional and statutory provisions relative to extradition of fugitives from justice between the

States do not forbid a requisition for an offense less than felony; they include every offense, from the highest to the lowest, known to the law of the State from which the accused had fled, including misdemeanors. The act of Congress (founded on the authority of Congress over the Territories) follows this principle. (*Ex parte Reggel supra.*) See, also, *Lascelles v. State of Georgia* (47 A. L. J. 413), and see 49 A. L. J. 137.

No. 677.

Commitment of fugitive from justice, under extradition treaty, by United States commissioner.

UNITED STATES OF AMERICA, } ss.:
 District of —, }

(Title of proceeding.)

This case having been heard before me, on requisition, through —, esquire, consul for —, at the port of —, that the said — be committed for the purpose of being delivered up, as a fugitive from justice, pursuant to the provisions of the treaty made between the United States and —, on the — day of —, 1—, I do find and adjudge that the evidence produced before me against the said — is sufficient in law to justify his commitment on the charge of —, had the crime been committed within the United States. Wherefore, I order that the said — be committed pursuant to the provisions of the said treaty, to abide the order of the president of the United States in the premises.

Given under my hand and seal, at the (city) of —, this — day of —, 1—.¹

C. W. M.,

United States Commissioner.

1. See *Matter of Kaine* (10 N. Y. Leg. Obs. 257), wherein the powers, functions and jurisdiction of commissioners in respect to the extradition of fugitives from justice is considered.

See, also, *Re Stupp (al. Vogt)* (12 Blatchf. 501), among other cases, as to review of decision of commissioner.

No. 678.

Warrant of secretary of state, for extradition of fugitive from justice.

DEPARTMENT OF STATE, WASHINGTON —, 1—.

To all to whom these presents shall come, greeting :

Whereas, A. M. (stating official title) has made requisition, in conformity with the — article of the treaty between the United States and —, for the mutual surrender of fugitive criminals, concluded at Washington on the — day of —, 1—, for the delivery up to justice of —, charged with the crime of (stating it), committed in —. And whereas, the said — has been found in the State of —, within the jurisdiction of the United States, and has, by a proper affidavit and in due form, been brought before C. W. M., a commissioner duly appointed by the United States Circuit Court for the district of —, in the — circuit, for examination of said charge of —. And whereas, the said commissioner has deemed the evidence sufficient to authorize the commitment of the said —, and has accordingly committed him, all of which appears by a copy of the proceedings transmitted to this department :

Now these presents are to require of the United States marshal for the district of —, or of any other public officer or person having charge or custody of said —, to surrender and deliver him up to —, consul for —, at the port of —, or to any other person or persons duly authorized to receive said fugitive, and conduct him to —, for trial.

In testimony whereof, I have hereunto signed my name and caused the seal of this department to
[SEAL] be affixed, at Washington, this — day of —, 1—, and of the independence of the United States the —.¹

I. F.,
Secretary of State.

1. An executive order of surrender of a fugitive from justice to a foreign government is purely a national act. It can only be performed

through the secretary of State by order of the president. (*Re* Kaine, 14 How. 103.)

In a warrant of arrest in extradition proceedings the offense or accusation need be described in general terms only, such as are used in the statute or treaty. (*Castro v. De Uriarte*, 16 Fed. Rep'r, 93.)

See, also, *Matter of British Prisoners* (1 Woodb. & M. 66); *Re* Farez (7 Blatchf. 34); *Ex parte* Van Hoven (4 Dill. 411), as to this warrant.

The current of opinion in the

United States has been that the government disclaims any obligation to surrender fugitives from foreign countries unless pursuant to a treaty stipulation, and will not make a practice of doing so (*Matter of Metzger*, 5 How. 176; *Case of José Ferreira dos Santos*, 2 Brock. Marsh. 493; *United States v. Davis*, 2 Sumn. 482; 1 Op. Atty.-Gen. 68; *id.* 510; 2 *id.* 359; 3 *id.* 661; 6 *id.* 85; 7 *id.* 356; and see *Re* Kaine, *supra*), though the government has in exceptional cases asserted that right. See, also, upon this subject generally 48 A. L. J. 228.

Fences and Fence-Viewers.

See Towns.

Ferries.

See Highways; Transportation Corporations.

Guaranty.

See Lease, Letters of credit and guaranties; Promissory notes.

CHAPTER XXIII.

Forms Relating to Guardian and Ward.**No. 679.** Appointment by minor of guardian.**680.** Appointment of a guardian by a father for a son.**No. 679.****Appointment by minor of a guardian.**

Know all men by these presents, that I, A. B., of —, son and heir of A. B., late of —, deceased, being above the age of fourteen years, namely, about the age of — years, have nominated, elected, chosen and appointed, and by these presents do nominate, elect, choose and appoint C. D., of —, to be guardian, as well of my person as of my real and personal estate, until I shall attain the age of twenty-one years.

In witness whereof, I have hereunto set my hand and seal, this — day of —, 1—.

A. B. [L. S.]

In presence of
E. F.

(Acknowledgment or proof, as in forms Nos. 6, etc.)

No. 680.**Appointment of a guardian, by a father, for a son.**

(2 N. Y. Rev. Stats. 150, as amended by Laws of 1888, chap. 454.)

Know all men by these presents, that I, A. B., of the town of —, in the county of —, and State of (New York), merchant, do hereby appoint M. N., of —, as the guardian

of my son C. B. (or, of my child likely to be born), and do, by these presents, commit and dispose of the custody, tuition and education of my said son (or, of my said child) to the said M. N., said appointment and disposal are to take effect immediately, and henceforth to continue during (the minority of my said son) (or, of my said child, or, mention less time).

And in case the said M. N. shall die before the expiration of said guardianship, then and in that case I do hereby commit and dispose of such guardianship, tuition and education, upon the death of the said M. N., and during the remaining portion of the time above mentioned, to G. H., of —.

In witness, etc. (as in form No. 30).¹

A. B. [L. S.]

In presence of

E. F.

(Acknowledgment or proof, as in forms Nos. 89, etc.)²

[Or, in case of an appointment of a guardian by will, insert a clause in the will substantially as follows: And I hereby commit the guardianship of my children, until they shall respectively attain the age of twenty-one years, unto my said wife, during her life (if she shall so long continue my widow), and from and after her decease (or, second marriage), unto my friend A. M.]³

1. See section 1 of 2 N. Y. R. S., p. 150, as amended by chapter 454 of Laws of 1888, as to this appointment under the laws of New York by the father. It may also be made by the mother, if she shall survive the father for one year, after the lapse of such year, notwithstanding the appointment of a guardian has been made by the father, and she may also make the appointment at any time if the father dies without having executed his right of appointment. In either case the appointment must be made by deed or will.

See, also, *Hagerty v. Hagerty* (9 Hun, 175), that a provision contained in a will that the testator's widow shall have the "guardianship, custody and tuition" of his children during their minority, creates her guardian both of their persons and estates; and see *Fullerton v. Jackson* (5 Johns. Ch. 278); *Matter of Murphy* (12 How. Pr. 513); *Gelston v. Shields* (16 Hun, 143); *Matter of Reynolds* (11 id. 41); *Fitzgerald v. Fitzgerald* (24 id. 370), upon this subject. As to powers and duties of such guardians, see sections 2, 3 and 4 of stat-

utes above referred to; *Clark v. Montgomery* (23 Barb. 464); *White v. Parker* (8 id. 48); *Thomas v. Bennett* (56 id. 197); *Hassard v. Rowe* (11 id. 22); *Copley v. O'Neill* (57 id. 299); *Thacker v. Henderson* (63 id. 271); *De Peyster v. Clarkson* (2 Wend. 77); *Emerson v. Spicer* (46 N. Y. 594); *Torry v. Black* (58 id. 185); *Willick v. Taggart* (17 Hun, 511); *Coakley v. Mahar* (36 id. 157).

2. As to necessity of acknowledgment or proof and recording of the deed of appointment in New York State, see section 2851 of the New York Code of Civil Procedure.

3. See section 2851 of New York Code of Civil Procedure, as to appointment by will. By that section no person can exercise, within the State, any power or authority, as guardian of the person or property of an infant by virtue of such appointment made by the will of a father or mother of the infant, being a resident of that State, unless the will has been duly admitted to probate and recorded in the proper Surrogate's Court, and letters of guardianship have been issued to him thereupon.

See Art. 5 of chap. 272 of Laws of N. Y. of 1896, repealing 2 N. Y. Rev. Stat. 150, and ch. 454 of Laws of 1888.

CHAPTER XXIV.

Forms Relating to Highways and Bridges.

(Laws of N. Y. of 1890, chap. 568.)

TITLE I.

FORMS RELATING TO HIGHWAY OFFICERS, THEIR GENERAL POWERS AND DUTIES.

(Laws of N. Y. of 1890, chap. 568, art. 1.)

- No. 681.** Order of highway commissioners ascertaining and describing an old highway not sufficiently described.
- 682.** Order of commissioners of highways dividing town into highway districts and assigning inhabitants and corporations thereto.
- 683.** Order of commissioners of highways appointing overseers of highways.
- 684.** Notice by town clerk to overseers of highways of their appointment.
- 685.** Notice by commissioners of highways to overseers, requiring them to warn persons and corporations to work on highways.
- 686.** Request by commissioners of highways to supervisors or town clerk to convene town board of auditors in special session.
- 687.** Certificate of supervisors and town clerk as to amount audited and allowed by town board for repairs to highways and bridges.
- 688.** Complaint to commissioners of highways that toll bridge has become unsafe.
- 689.** Notice by commissioners of highways to owner of toll bridge or his agent that toll bridge has been found unsafe.
- 690.** Annual report of commissioners of highways to town board at its first meeting.
- 691.** Annual report of commissioners of highways to town board at its second meeting.
- 692.** Notice to overseer of highways to remove snow or other obstructions to highway.
- 693.** Notice of overseer of highways pursuant to notice form No. 692, to assist in removing obstructions to highway.
- 694.** Complaint by overseer of highways in action for fine against person failing to appear pursuant to notice, form No. 693.
- 695.** Complaint in action against overseer of highways for neglect to have highway opened, by removing obstructions therefrom.
- 696.** Complaint to commissioners of highways against overseer for neglect of duty.
- 697.** Bond of indemnity by complainant upon refusal or neglect of commissioners to prosecute overseer for penalty.

No. 681.

Order of highway commissioners ascertaining and describing an old highway not sufficiently described.

(Laws of N. Y. of 1890, chap. 568, § 4, subd. 2.)

It having appeared to the commissioners of highways of the town of —, in the county of —, at a meeting of said commissioners duly convened and held at —, in said town, on the — day of —, 1—, all the said commissioners having met and deliberated upon the subject embraced in this order [or, if but two of the commissioners met, say as follows: All the said commissioners having been duly notified to attend the said meeting for the purpose of deliberating upon the subject embraced in this order] (*) that the highway in said town leading from — to —, has been laid out as a highway, but has not been sufficiently described (or, has been used as a highway for (more than) twenty years but has not been recorded.)

It is hereby ordered by said commissioners that the said highway be and the same is hereby ascertained and described according to a survey which they have caused to be made thereof as follows, to wit: Beginning, etc. (insert description,) and that the center of said highway be the line of said survey and said highway to be of the width of (three) rods.*

In witness whereof, we have hereunto set our hands this — day of —, 1—.

(Signatures of Commissioners.)

Commissioners.

1. See subdivision 2 of section 4 of article 1 of chapter 568 of Laws of New York of 1890, which act took effect May 1, 1891, as to this order.

Formerly it was required to be stated in the order either that all the commissioners met and deliberated upon the order, or if only two attended, that all were notified to attend the meeting for the purpose of deliberating thereupon.

See 1 R. S. 525, § 125; *People ex rel. Dann v. Williams* (36 N. Y. 441). That section has been repealed by chapter 568 above mentioned. But see sections 18 and 19 of chapter 677 of Laws of New York of 1892.

2. No highway is to be laid out less than three rods in width. (Laws of N. Y. of 1890, chap. 568, § 90.)

No. 682.

Order of commissioners of highways dividing town into highway districts and assigning inhabitants and corporations thereto.

(Laws of N. Y. of 1890, chap. 568, § 4, subds. 3, 4.)

The commissioners of highways of the town of —, in the county of —, at a meeting of said commissioners duly

convened and held at —, in said town, on, etc., all, etc. (as in form No. 681) (*), do hereby order, pursuant to statute, that the said town of — be and the same is hereby divided into — highway districts, said districts to be as follows, viz.:

1. Highway district No. 1 shall embrace the following highways, viz.: (describe highways embraced in that district), and the following inhabitants and corporations of said town, liable to work upon highways, are hereby assigned to said highway district No. 1, to wit: (naming them).

2. Highway district No. 2 shall include, etc. (as above).
(And direct in like manner as to each district.)

In witness whereof, we have, etc. (as in form No. 681).¹

(Signatures of commissioners.)

Commissioners.

1. The effect of an order discontinuing a highway district formed from parts of two districts but not expressly providing for embracing its territory within any other highway district, is to restore the two districts to their original limits, and such order is a valid one. (People, *ex rel.* Seward, v. Sly, 4 Hill, 593.)

See subdivisions 3 and 4 of section

4 of article 1 of chapter 568 of Laws of New York of 1890, which act took effect May 1, 1891, as to this order; and see Buffalo Plank Road Co. v. Commissioners of Highways, etc. (10 How. Pr.) 242, 243.) See, also, chapter 782 of Laws of 1897, amending subd. 3 of said section 4.

As to statements of order of highway commissioners see note 1 to form No. 681.

No. 683.

Order of commissioners of highways appointing overseers of highways.

(Laws of N. Y. of 1890, chap. 568, § 4, subd. 5.)

We, the undersigned, commissioners of highways of the town of —, in the county of —, do hereby, pursuant to statute, at a meeting duly convened and held in said town on the — day of —, 1—, all, etc. (as in form No. 681), appoint the following persons to be the overseers of highways in said town (for one year and until their successors shall be appointed),¹ viz.:

A. B., a resident of the — road district, to be overseer of highways therefor; C. D., a resident of the — road

district, to be overseer of highways therefor ; E. F., a resident, etc., to be, etc.

In witness whereof, etc. (as in form No. 681.)²

(Signatures of commissioners.)

Commissioners.

1. These words in brackets may be inserted, although they seem to be unnecessary.

2. See subdivision 5 of section 4 of chapter 568 of Laws of New York of 1890, which act took effect May 1, 1891, as to this appointment, which is to be made in writing and filed with the town clerk, within one

week after each annual town meeting.

As to duties of overseers of highways, see section 20 of same statute ; for notice by town clerk to overseers of their appointment and new appointment in case of refusal to serve or vacancy, see note 1 to form No. 684.

As to statements in orders of highway commissioners, see note 1 to form No. 681.

No. 684.

Notice by town clerk to overseer of highways of their appointment.

(Laws of N. Y. of 1890, chap. 568, § 4, subd. 5.)

To A. B.:

You are hereby notified, pursuant to law, of your appointment by the commissioners of highways of the town of —, in the county of —, as overseer of highways of the — road district of said town (for one year, and until your successor shall be appointed).¹

Dated —, 1—.

Yours, etc.,

M. N.,

Town Clerk of said town.

1. See subdivision 5 of section 4 of chapter 568 of Laws of New York of 1890, which took effect May 1, 1891, as to this notice, which is to be given within ten days after the filing of the appointment (form No. 683) with the town clerk. If any person so ap-

pointed overseer shall refuse to serve, or his office shall become vacant, the commissioners are in like manner to appoint some other person to be overseer. As to insertion of words in brackets, see note 1 to form No. 683.

No. 685.

Notice by commissioners of highways to overseers, requiring them to warn persons and corporations to work on highways.

(Laws of N. Y. of 1890, chap. 568, § 4, subd. 6.)

To (naming overseers) overseers of highways of the town of —, in the county of —:

You are hereby required, pursuant to statute, to warn all persons and corporations assessed to work on highways in said town, to come and work thereon, on the — day of —, 1—, and for as long a time thereafter as may be necessary, with (naming teams and implements).¹

Dated —, 1—. Yours, etc.,

(Signatures of commissioners, or, signature of commissioner.)

Commissioners (or, a Commissioner)
of Highways of the said town.

1. See subdivision 6 of section 11 York of 1890, which act took effect of chapter 568 of the Laws of New May 1, 1891, as to this notice.

No. 686.

Request by commissioners of highways to supervisor or town clerk to convene town board of auditors in special session.

(Laws of N. Y. of 1890, chap. 568, § 11.)

To A. B., supervisor (or, town clerk) of the town of —, in the county of —:

You are hereby requested, pursuant to statute, to convene the town board of the town of —, in special session for the auditing of the bills and expenses incurred in the erection (and repairs) [or, repairs] of highways (or, bridges) in said town which have been damaged (or, destroyed) by the elements (or, state other methods of destruction).¹

Yours, etc.,

A. M.,

M. N., etc.,

Commissioners of Highways of the town
of —, in the county of —.

1. See section 11 of chapter 568 of Laws of N. Y. of 1890, which took effect May 1, 1891, as to this request. As to constitution of town board see section 160, article 7, of chapter 569 of Laws of 1890.

No. 687.

Certificate of supervisor and town clerk as to amount audited and allowed by town board for repairs to highways and bridges.

(Laws of N. Y. of 1890, chap. 568, § 11.)

We, the undersigned, A. B., supervisor of the town of —, in the county of —, and C. D., town clerk of said town, do hereby certify, pursuant to law, that at a meeting of the town board of said town convened in special session by said supervisor (or, town clerk) upon the written request of the commissioners of highways of said town, which meeting was held at —, on the — day of —, 1—, the bills and expenses incurred in the erection (or, repairs) of the following highways (or, bridges), to wit: (describing them) were presented to and audited by the said town board. That the amount audited and allowed by said board at said meeting was the sum of — dollars; that said award was made in favor of (stating whom), and that the nature of the work done and material furnished therefor was as follows: (stating same.)

In witness, etc., (as in form No. 681).¹

A. B., Supervisor.

C. D., Town Clerk.

1. See section 11 of chapter 568 of the Laws of New York of 1890, which act took effect May 1, 1891, as to this certificate and its contents. Such certificate bears interest from its date, and the amount thereof, with interest, is to be levied and collected in the same manner as other town expenses. See also section 12 of same chapter as to verification of account and manner of auditing same.

No. 688.

Complaint to commissioners of highways that toll bridge has become unsafe.

(Laws of N. Y. of 1890, chap. 568, § 13.)

Complaint is hereby made by E. F., of —, to A. B. and C. D., commissioners of highways of the town of —, in the county of —, that the toll bridge located at —,

and being in whole (or, in part) in said town, has become and is unsafe for the public use by reason of (stating causes).

The said E. F. asks that proceedings may be taken, pursuant to statute, for the repairing of said toll bridge, so as to make the same safe and convenient for public use.¹

Dated —, 1—.

E. F.

— COUNTY, ss.:

E. F., of —, in said county, being duly sworn, says that he is the complainant mentioned in the foregoing complaint, subscribed by him; that said complaint is true to the best of deponent's knowledge, information and belief.

E. F.

(Jurat, as in form No. 32.)

1. See section 13 of chapter 568 of May 1, 1891, and by it chapter 448 of Laws of New York of 1890, as to Laws of 1873, containing provisions this proceeding. That act took effect upon the same subject, was repealed.

No. 689.

Notice by commissioners of highways to owner of toll bridge or his agent that toll bridge has been found unsafe.

(Laws of N. Y. of 1890, chap. 568, § 13.)

To G. H., etc. (or, to G. H., agent of B. F., etc.), owner (or, owners) of the toll bridge located at —, in the town of —:

You (and each of you) are hereby notified that the undersigned, commissioners of highways of the town of —, in the county of —, have, upon the complaint of E. F., of —, made pursuant to statute, carefully and thoroughly examined the toll bridge owned by you (or, by B. F., etc.), located at —, and found the same to be unsafe for the public use, and that you are required to immediately commence repairing the same, and to cause such repairs to be made within one week from the day of the giving of this

notice, or within such reasonable time thereafter as may be necessary to thoroughly repair the said bridge so as to make it, in all respects, safe and convenient for public use.¹

Dated —, 1—.

F. M.,
N. P., etc.,
Commissioners of Highways of said town.

1. See note to last form, No. 688, of New York of 1890, therein referred to, and section 13 of chapter 568 of Laws to, as to this proceeding.

No. 690.

Annual report of commissioners of highways to town board, at its first meeting.

(Laws of N. Y. of 1890, chap. 568, § 19.)

We, the undersigned, commissioners of highways of the town of —, in the county of —, hereby make, pursuant to statute, our first annual report to the town board of said town, as follows: (*)

First. That the labor assessed in said town, during the year ending on the date hereof, is — days, and the amount thereof performed is — days, as appears by the account rendered to us by the several overseers of highways in said town.

Second. That the sum received by said commissioners for penalties, commutations and all other sources is — dollars, to wit:

| DATE. | From whom received. | On what account. | Amount. |
|---------|---------------------|--|----------|
| 18..... | C. D..... | (The balance of money remaining in his hands as overseer.) | \$ |

Third. The improvements which have been made on the highways and bridges in said town during the year preceding the date of this report, are as follows: (state same) and

that the state of such highways and bridges is as follows: (state whether they are in good repair or not).¹

All of which is respectfully submitted.

Dated —, 1—.

(Signatures of commissioners.)

Commissioners.

1. See subdivision 3 of section 19 of 1890, which act went into effect of chapter 568 of Laws of New York May 1, 1891, as to this report.

No. 691.

Annual report of commissioners of highways to town board at its second meeting.

(Laws of N. Y. of 1890, chap. 568, § 19.)

As in last form No. 690, to (*), substituting therein word "second" for word "first," and from thence as follows:

First. That the following improvements necessary to be made on the highways and bridges of said town are as follows: (stating same) and that the probable expense thereof will be about the sum of — dollars.

(Conclude as in form No. 690.)¹

(Signatures of commissioners.)

Commissioners.

1. See section 19 of chapter 568 of Laws of New York of 1890, as to this report, a duplicate of which is to be delivered to the supervisor of the town, who shall present such duplicate statement to the board of supervisors, who shall cause the amount so estimated, not exceeding five hundred dollars in any one year, to be assessed, levied and collected, in such town, in the same manner as other town charges. See, also, form No. 690, and note thereto.

No. 692.

Notice to overseer of highway to remove snow or other obstruction from highway.

(Laws of N. Y. of 1890, chap. 568, § 21.)

To A. B., overseer of highways of the — district of the town of —, in the county of —:

You are hereby notified, pursuant to law, by the undersigned inhabitants of said town liable to the payment of high-

way tax therein, that the highway in said town, leading from — to —, is obstructed by snow (or, name other obstruction) at (stating place of obstruction), and that you are requested to remove said obstruction.¹

Dated —, 1—.

Yours, etc.,
C. D.,
E. F.

1. See section 21 of chapter 568 of Laws of New York of 1890, which took effect May 1, 1891, as to this notice and its effect.

No. 693.

Notice by overseer of highways pursuant to notice, form No. 692, to assist in removing obstructions from highway.

(Laws of N. Y. of 1890, chap. 568, § 21.)

To C. D., (E. F., etc.):

You (and each of you) are hereby notified and called upon pursuant to law, to appear at —, on the — day of —, 1—, at — o'clock in the — noon, [with team and sleigh, (or, teams and sleighs,) etc.] to assist in removing the obstructions to the highway in said town leading from — to —, caused by snow (or, name other obstruction), notice of said obstruction having been given to the undersigned by (two) of the inhabitants of the said town liable to highway tax, and which obstruction he has been requested by said notice to remove.¹

Dated —, 1—

Yours, etc.,
A. B.,
Overseer of Highways for the —
district of said town.

1. See section 21 of chapter 568 of Laws of New York of 1890, which took effect May 1, 1891, as to this notice, and for notice by inhabitants to overseer, see last form, No. 692.

No. 694.

Complaint by overseer of highway in action for fine against persons failing to appear pursuant to notice, form No. 693.

(Laws of N. Y. of 1890, chap. 568, § 21.)

IN JUSTICE'S COURT:

Before M. N., Justice of the Peace of the town of —, in the county of —.

| | | |
|--|---|--|
| A. B., as overseer of highways of the — district of the town of —, in the county of — | } | |
| <i>against</i> | | |
| C. D. | } | |

The plaintiff as overseer of, etc., (as above) complains against the defendant, and alleges:

That he was duly appointed such overseer by I. J. and K. L., commissioners of highways in the said town of —, on the — day of —, 1—, by an instrument in writing under their hands filed with the town clerk of said town, and was duly notified by said town clerk of said appointment. That on or about the — day of —, 1—, he was notified in writing, as such overseer, by C. P. and J. F., two inhabitants of said town liable to the payment of the highway tax of, and requested to remove an obstruction caused by snow (or, state other obstruction) in the highway in said town leading from — to —; that at the time of the receipt of said notice by the plaintiff said obstruction existed in said highway, and the highway labor in said district had been worked out or commuted for (or, returned to the supervisor of said town), and the plaintiff thereupon called upon the defendant, said defendant being a taxpayer of said town, to assist in removing the said obstruction, notifying him of the time and place at which he was to attend for that purpose. That the defendant failed to appear at the time and place designated by said plaintiff, and has failed to commute for such labor at the rate of a dollar a day, — days' labor having been assessed therefor upon the defendant, that being the amount of the

assessment for said labor with which the said defendant was assessable, in proportion to his original assessment for highway labor in said town.

Wherefore the plaintiff as such overseer demands judgment against the defendant for the sum of — dollars, the amount of the fine for which he is liable to the plaintiff at the rate of one dollar and fifty cents per day for each day's labor which he was so required to perform, and for the costs of this action.¹

F. R.,

Agent and Attorney for plaintiff.

1. See section 21 of chapter 568 of New York Code of Civil Procedure as to indorsement upon summons issued in such action.

No. 695.

Complaint in action against overseer of highways for neglect to have highway opened by removing obstruction therefrom.

(Laws of N. Y. of 1890, chap. 568, § 21.)

(Title of cause.)

The complaint of the above named plaintiff respectfully shows that by an act of the legislature of the State of New York, passed June 7, in the year 1890, and known as the highway law, it is enacted that (setting forth the provisions of section 21 of the act prescribing the penalty).

That before the commencement of this action, and on or about the — day of —, 1 —, the defendant, being at the time overseer of highways for the — district of the town of —, neglected, etc. (setting forth the violation of the statute by which the penalty has been incurred).

Wherefore the plaintiff demands from the said defendant the sum of — dollars (insert amount of penalty prescribed by the statute), together with the costs of this action.¹

M. R.,

Plaintiff's Attorney and Agent.

1. See section 21 of chapter 568 of New York Code of Civil Procedure as to indorsement upon summons issued in such action.

No. 696.**Complaint to commissioners of highways against overseer for neglect of duty.**

(Laws of N. Y. of 1890, chap. 568, § 23.)

I, A. B., a resident of the town of —, in the county of —, hereby complain to the commissioners of highways of said town that F. R., the overseer of highways for highway district No. —, in said town, has neglected (or, refused) to warn I. J., K. L., etc. (or, The — Company), who are (or, which is) assessed to work on the highways in said district, to work on said highways, after having been required so to do by the said commissioners [or, by one of said commissioners; or, has neglected (or, refused) to collect from F. K., the sum of — dollars, which has been imposed upon him as a fine for neglecting to appear and work upon the highway in his said highway district; or, state other cause of complaint under section 22 of chapter 568 of Laws of N. Y. of 1890], and I hereby require the said commissioners to prosecute said F. R. for the said offense.¹

Dated —, 1—.

A. B.

1. See section 23 of chapter 568 of Laws of New York of 1890, as to this complaint. The costs and expenses incurred by the commissioners in good faith, in the proceeding, are made by that section a town charge, to be audited by the town board.

No. 697.**Bond of indemnity by complainant upon refusal or neglect of commissioners to prosecute overseer for penalty.**

(Laws of N. Y. of 1890, chap. 568, § 23.)

Know all men by these presents: That we, A. B. and C. D. of, etc., are held and firmly bound, jointly and severally, to the town of —, in the county of —, in the sum of — dollars, to be paid to the said town, or to its attorney or assigns, for which payment well and truly to be made, we

bind ourselves and our heirs, executors or administrators firmly by these presents.

The condition of this obligation is such that, whereas complaint has been made by the said A. B., more than thirty days since, to the commissioners of highways of said town, that F. R., overseer of highways of the —— highway district of said town, has neglected (or, refused) as such overseer, to warn I. J., who is assessed to work on said highways in said district, to work on said highways after having been required so to do by (one of) the commissioners of highways of said town).

And whereas, the said commissioners have refused (or, neglected) to prosecute said F. R. for the penalty incurred by him by his said refusal (or, neglect) and the said A. B. is about to prosecute the said F. R. pursuant to statute for the said penalty :

Now, therefore, if the said A. B. shall indemnify and save harmless the said town from all costs and expenses paid or incurred by it in said prosecution, then this obligation to be void, otherwise to be and remain in full force and virtue.¹

A. B. [L. S.]

C. D. [L. S.]

Sealed and delivered in presence of

M. N.

(Acknowledgment or proof, as in forms Nos. 89, etc.)

I, J. K., supervisor of the town of ——, in the county of ——, do hereby approve of the foregoing bond and of the surety therein.

Dated ——, 1——.

J. K.

1. See section 23 of chapter 568 of the Laws of New York of 1890, as to this bond. The indemnity is to be given in such manner as the supervisor may approve.

TITLE II.

FORMS RELATING TO ASSESSMENT FOR HIGHWAY LABOR.

(Laws of N. Y. of 1890, chap. 568, art. 2.)

- No. 698.** List by overseer of the names of inhabitants in his highway district liable to highway taxes.
- 699.** List and statement of the contents of unoccupied lands owned by non-residents.
- 700.** Assessment of highway labor by commissioners of highways.
- 701.** Assessment by overseer of highways of persons left out of the list of assessments for highway labor.
- 702.** Notice of appeal from assessment by overseer to commissioners of highways.
- 703.** Notice of appeal by non-resident owner of unoccupied lands from assessment made by commissioners of highways.
- 704.** Notice of time of hearing of the appeal to the commissioners of highways.
- 705.** Assessment of highway labor by overseer of highways, additional to the assessment by the commissioners.
- 706.** Order of commissioners of highways authorizing the location and planting of trees and the construction of sidewalks.
- 707.** Application of majority of inhabitants in highway district for expenditure of a portion of highway labor, etc., in construction, etc., of sidewalks.
- 708.** Order of highway commissioners pursuant to application, form No. 707.
- 709.** Certificate of anticipation of highway labor from overseer to person or corporation performing labor.
- 710.** Request of taxpayers of town, that the electors vote at town meeting upon question of change of system of taxation for working highways.

No. 698.

List to be made by overseer of the names of inhabitants in his highway district liable to highway labor.

(Laws of N. Y. of 1890, chap. 568, § 31.)

I, A. B., overseer of highways for highway district No. —, of the town of —, in the county of —, do hereby certify that the following is a correct list of the names of all the inhabitants in said highway district No. —, who are liable to work on the highways :¹

| NAMES. | | NAMES. | |
|--------|--|--------|--|
| E. F. | | I. J. | |
| G. H. | | K. L. | |

Dated —, 1—.

A. B.,
Overseer.

1. See section 31 of chapter 568 of town, within sixteen days after his Laws of New York of 1890, as to this appointment, and which the town list, which is to be delivered by each clerk is to deliver to the commissioners of the overseers to the clerk of the sioners of highways.

No. 699.**List and statement of the contents of unoccupied lands, owned by non-residents.**

(Laws of N. Y. of 1890, chap. 568, § 32.)

At a meeting of the commissioners of highways of the town of —, in the county of —, held in said town on the — day of —, 1—, the said commissioners A. F., etc. (naming them) (*) before making the assessment of highway labor in said town, have made out, pursuant to law, the following list and statement of the contents of all unoccupied lots, pieces or parcels of land within the said town, owned by non-residents.¹

Dated —, 1—.

| NAMES OF OWNERS. | Number of highway district. | Contents. | Value. |
|------------------|-----------------------------|-----------|--------|
| | | | |
| | | | |

(Signatures of commissioners.)

Commissioners.

1. See section 32 of chapter 568 of commissioners of highways, see note Laws of New York of 1890, as to this 1 to form No. 681.
statement; as to form of order of

No. 700.

Assessment of highway labor by commissioner of highways.

(Laws of N. Y. of 1890, chap. 568, § 33.)

As in form No. 699, to (*), and from thence as follows:
Having proceeded to ascertain, assess and apportion the highway labor to be performed in said town for the ensuing year, have made out the following estimate and assessment for the highway districts of said town:

1. For highway district No. —, in said town, the inhabitants of said town assigned and the days respectively assigned to each of them, are as follows:

| NAMES, ETC. | NAMES, ETC. |
|-----------------------------|-----------------------------|
| A. B., 1 day. | E. F., 5 days. |
| C. D., 2 days. | G. H., 3 days. |
| The — Company, 6 days, etc. | The — Company, 4 days, etc. |

2. For road district No. —, in said town, the inhabitants of said town, etc. (as above).

(And proceed in like manner as to the other road districts.)

3. The lands owned by non-residents of said town, and situated therein, are assessed as follows:

| OWNER'S OR OCCUPANT'S NAME, IF KNOWN. | Description of land. | Value. | Assessment. |
|--|----------------------|--------|-------------|
| | | | |
| | | | |

In witness, etc. (as in form No. 681).¹

(Signatures of commissioners).

Commissioners.

1. See section 33 of chapter 568 of which is to be subscribed by the Laws of New York of 1890, as to commissioner and filed with the this assessment and apportionment, town clerk. See, also, section 34,

id., as to copies of list to be made by the town clerk for the commissioners, and delivered to the overseers by them.

Section 38 of said chapter provides that whenever the occupant of land shall be assessed by the commissioners for any land not owned by him, they shall distinguish in their assessment lists, the amount charged upon such land, from the personal tax, if any, of the occupant thereof; but when any such land shall be assessed in the name of the occupant, the

owner thereof shall not be assessed during the same year to work on the highway, on account of the same land. The assessments to be made in the name of occupants under subdivision 3 of section 33, above mentioned, are of lands of non-residents occupied by an inhabitant of the town.

See, also, section 39 of chapter 568, above mentioned, as to deduction by tenant from his rent, of highway tax worked out or covenanted for by him.

No. 701.

Assessment by overseer of persons left out of the list of assessments for highway labor.

(Laws of N. Y. of 1890, chap. 568, § 35.)

I, the undersigned, overseer of road district No. —, in the town of —, in the county of —, do hereby assess the following persons whose names have been omitted from the foregoing (or, annexed) list (or, who have become inhabitants of said district since the foregoing, etc., list was made), to work on the highways in said district, viz.: A. C., — days; P. F., — days.¹

Dated —, 1—.

I. L.,
Overseer.

See section 35 of chapter 568 of an appeal to the commissioners of Laws of New York of 1890, as to highways. this assessment, which is subject to

No. 702.

Notice of appeal from assessment by overseer to commissioners of highways.

(Laws of N. Y. of 1890, chap. 568, § 36.)

Notice is hereby given by the undersigned that he appeals to A. M., etc., commissioners of highways of the town of —, in the county of —, from the assessment made by

A. B., overseer of highways for highway district No. —, in said town, for the following reasons, viz.: (state same).¹

Dated —, 1—.

A. F.

1. See section 35 of chapter 568 of the Laws of New York of 1890, as to this notice.

No. 703.

Notice of appeal by non-resident owner of unoccupied lands, from assessment made by commissioners of highways.

(Laws of N. Y. of 1890, chap. 568, § 36.)

Notice is hereby given that the undersigned, A. B. (or, C. D., as agent for A. B.), a non-resident owner of lands situated in the town of —, in the county of —, who conceives himself aggrieved by the assessment for highway labor made by the commissioners of highways of the said town, upon the lands described as follows, to wit: (insert description of lands as contained in the list or statement of commissioners, form No. 699), does hereby appeal to the county judge of said county of —, from the said assessment of said commissioners.¹

Dated —, 1—.

A. B., Owner,

(or, C. D., Agent for A. B., Owner.)

1. See section 36 of chapter 568 of Laws of New York of 1890, as to this notice. The judge is required, within twenty days thereafter, to hear and decide such appeal, the owner or agent giving notice to the commissioners of highways of the time of the hearing before the judge, and his decision thereupon is made final and conclusive. For notice to commissioners, see next form.

No. 704.

Notice of time of hearing of the appeal to the commissioners of highways.

(Laws of N. Y. of 1890, chap. 568, § 36.)

To M. N. and F. P., commissioners of highways of the town of —, in the county of —:

You are hereby notified that an appeal has been taken by the undersigned, A. B. (or, C. D., as agent of A. B.), on the

— day of —, 1—, to Hon. A. F., the county judge of the county of —, from your assessment for highway labor, of the land owned by me (or, by A. B.) in said town, and that said appeal will be heard before said judge at (his chambers) in the (city) of —, in said county, on the — day of —, 1—, at — o'clock in the (fore)noon.¹

Dated —, 1—.

Yours, etc.,

A. B. (or, C. D., Agent for A. B.)

1. See section 36 of chapter 568 of Laws of New York of 1890, as to this notice.

No. 705.

Assessment of highway labor by overseer of highways, additional to the assessment by the commissioners.

(Laws of N. Y. of 1890, chap. 568, § 42.)

Whereas I, the undersigned overseer of highways of the — highway district of the town of —, in the county of —, have deemed the quantity of labor assessed on the inhabitants of the said district by the commissioners of highways, insufficient to keep the highways therein in repair, I do, therefore, pursuant to statute, hereby make a further assessment thereof upon the actual residents of said district as follows, to wit: (Insert list as in form No. 698).¹

Dated —, 1—.

F. R.,

Overseer.

1. See section 42 of chapter 568 of the Laws of New York of 1890, as to this assessment.

No. 706.

Order of commissioners of highways authorizing the location and planting of trees and the construction of sidewalks along highway.

(Laws of N. Y. of 1890, chap. 568, § 43.)

As in form No. 682, to (*) and from thence as follows: do hereby authorize, pursuant to law, the planting of trees and the construction of sidewalks along the highways in said

town, leading from — to —, by the owners of property adjoining said highway, as follows: (stating particulars as to trees and sidewalks) as said trees and sidewalks are located and laid down upon the diagram hereto annexed, certified by us.¹

(Signatures of commissioners,
or a majority of them.)

Commissioners.

(Annex map or diagram referred to in order.)

1. See section 43 of chapter 568 of Laws of New York of 1890, as to this order, which is to be filed in the office of the town clerk of the town where the highway is located, within ten days after the making of the order.

See, also, section 44, id., as to allowance upon highway tax by overseer or other officer in charge of the highway to inhabitant liable to tax planting forest or shade trees pursuant to order. See *Edsall v. Howell* (86 Hun, 424).

No. 707.

Application of majority of inhabitants in highway district, for expenditure of a portion of highway labor, etc., in construction, etc., of sidewalks.

(Laws of N. Y. of 1890, chap. 568, § 45.)

To M. N. and O. P., commissioners of highways of the town of —, in the county of —:

We, the undersigned, a majority of the inhabitants of the — highway district in said town subject to assessment for highway labor therein, do hereby pursuant to statute, make application to you, that you authorize —, of the highway labor of said district, or of the commutation money received therefor, to be expended under the direction of the overseer of highways of said district, in the construction, repair and improvement of the sidewalks within the limits of said district hereinafter mentioned, viz.: (stating what sidewalks.)

And we further make application to you pursuant to statute, that you will authorize — of the highway labor of said district to be anticipated for — years, for constructing,

improving or repairing the sidewalk in said district (describing it).¹

Dated —, 1 —.

(Signatures of applicants.)

1. See section 45 of chapter 568 of Laws of New York of 1890, as to this application. Upon the application being made the commissioners of highways may authorize not more than three-quarters of the highway labor of the district, or of the commutation money received therefor, to be expended for the construction

of sidewalks, etc., and may authorize not more than one-fourth of the highway labor of the district to be anticipated for the construction, etc., of any such sidewalk.

The two applications may apparently be made either together or separately.

No. 708.

Order of highway commissioners pursuant to application, form No. 707.

(Laws of N. Y. of 1890, chap. 568, § 45.)

As in form No. 681, to (*) and from thence as follows: do hereby upon the written application of a majority of the inhabitants of the — highway district in said town, subject to assessment for highway labor therein, authorize — of the highway labor of the said district, or of the commutation money received therefor, to be expended under the direction of the overseer of highways of said district in the construction, repairs and improvement of the sidewalks of said district (describing sidewalks).

And we do further authorize — of the highway labor of said district, to be anticipated for — years, for constructing, improving or repairing the sidewalk in said district (describing it).¹

(Signatures of commissioners.)

1. See section 45 of chapter 568 of order and its effect, and see note to Laws of New York of 1890, as to this last form.

No. 709.

Certificate of anticipation of highway labor from overseer to person or corporation performing the labor.

(Laws of N. Y. of 1890, chap. 568, § 46.)

I, F. P., overseer of highways of the — highway district of the town of —, in the county of —, do hereby certify,

pursuant to statute, that A. B., a person assessed for highway labor in said highway district, has performed (or, commuted for) — days highway labor in said district, in the construction (or, improving; or, repairing) of the sidewalk in said town (describing it).¹

Dated —, 1—.

(Signature of overseer.)

Overseer.

1. See section 46 of chapter 568 of Laws of New York of 1890, as to this certificate and its effect; and see section 47, id., as to transfer of the certificate.

No. 710.

Request of taxpayers of town that the electors vote at town meeting upon question of change of system of taxation for working highways.

(Laws of N. Y. of 1890, chap. 568, § 51.)

To the electors of the town of —, in the county of —:

You are hereby requested, pursuant to statute, to vote by ballot at the next annual town meeting of said town, to be held at —, on the — day of —, 1—, upon the question of changing the system of taxation for working the highways of said town from the labor system of taxation to the money system of taxation.¹

Dated —, 1—.

(Signatures of taxpayers.)

1. See section 51 of chapter 568 of Laws of New York of 1890, as to this request; and see section 52, id., as to when the change, if voted, shall take effect; see, also, section 53, id., of the manner of raising money for repair of highways, in case of a change to the money system.
See, also, amendments to said sections 51 and 52 by chapter 386 of Laws of 1895.

TITLE III.

FORMS RELATING TO THE DUTIES OF OVERSEERS AND THE PERFORMANCE OF HIGHWAY LABOR.

(Laws of N. Y. of 1890, chap. 568, art. 3.)

- No. 711.** Notice by overseer to residents of highway district to appear and work upon highway.
- 712.** Notice to resident agent of non-resident landholder of number of days' labor assessed upon such non-resident, etc.
- 713.** Notice to be filed by overseer in case of not being able to find agent of non-resident in the town.
- 714.** Lists of residents and of lands of non-residents and unknown persons, on which assessments for highway labor are unpaid, to be made by overseers and delivered to supervisors.
- 715.** Complaint in action by commissioners of highways for recovery of penalty for refusal, etc., to deliver list of unpaid assessments or to make affidavit.
- 716.** Annual account to be rendered to commissioners of highways by overseers of highways.
- 717.** Notice by overseers of highways to occupant of lands to remove weeds, etc., from bounds of highway.
- 718.** Report of overseer to commissioners of highways as to weeds, etc., removed from highway.

No. 711.**Notice by overseer to residents of highway district to appear and work upon highway.**

(Laws of N. Y. of 1890, chap. 568, § 60.)

To M. R. (or, the M. R. Company) (naming resident or corporation assessed):

You are hereby notified, pursuant to law, that you are assessed to work — days during the year 1—, upon the highways of highway district No. —, in the town of —, in the county of —, for which district the undersigned is overseer of highways, and that you are to appear for the purpose of such work, with (naming teams and implements) at — o'clock in the — noon, on the — day of —, 1—, at (naming place), and that you will be allowed at the

rate of one day for every eight hours of work upon said highway, between seven o'clock in the forenoon and six o'clock in the afternoon.¹

Dated —, 1—.

Yours, etc.,

A. F.,

Overseer

1. See section 60 of chapter 568 of Laws of New York of 1890, as to this notice. The notice to corporations is required by that section to be served personally on an agent thereof residing in the town, if any, or if none, by filing the notice in the office of the town clerk, at least five days before the labor shall be required; and any number of days not exceeding fifty, may be required to be performed by any such corporation in one day.

See as to teams, etc., which may be required from any person in the district having the same, and the credit therefor, section 63, id. As to substitutes, see section 64, id. By the latter section a day's labor shall be eight hours of work, and every person or corporation assessed more than one day shall be allowed to work ten hours in each day.

No. 712.

Notice to resident agent of non-resident land-holder of number of days' labor assessed upon such non-resident, etc.

(Laws of N. Y. of 1890, chap. 568, § 61.)

To M. H., agent of P. F.:

You are hereby notified, pursuant to law, that the lands of M. H., situate in highway district No. —, of the town of —, in the county of —, are assessed for — days' labor during the year 1—, upon the highways in said district, of which highways the undersigned is overseer; and that the said labor is to be performed at — o'clock in the — noon, on the — day of —, 1— (and the — days following that day), on the highway in said town, between the dwelling houses of A. E. and M. N.¹

Dated —, 1—.

Yours, etc.,

A. F.,

Overseer.

1. See section 61 of chapter 568 of Laws of New York of 1890, as to this notice, which is to be given at least five days previous to the time at which the labor is to be performed.

No. 713.

Notice to be filed by overseer in case of not being able to find agent of non-resident in the town.

(Laws of N. Y. of 1890, chap. 568, § 61.)

Notice is hereby given, pursuant to statute, that the lands hereinafter described, situated in highway district No. —, of the town of —, in the county of —, for which district the undersigned is overseer of highways, have been assessed for highway labor as lands owned by non-residents of said town, and that said labor is to be performed on the — day of —, 1—, and the — days following that day, on the highway of said district between the dwelling houses of M. N. and O. P., and the owners of said lands or their agents, respectively, are hereby required to cause the said labor to be performed.¹

| NAMES OF OWNERS. | Description of lands. | Assessments. |
|------------------|-----------------------|--------------|
| | | |
| | | |

Dated —, 1—.

A. F.,
Overseer.

1. See section 61 of chapter 568 of office of the town clerk, at least Laws of New York of 1890, as to twenty days before the time ap- this notice, which is to be filed in the pointed for performing such labor.

No. 714.

List of residents and of lands of non-residents and unknown persons on which assessments for highway labor are unpaid; to be made by overseers and delivered to supervisors.

(Laws of N. Y. of 1890, chap. 568, § 66.)

I, J. F., overseer of highways for highway district No. —, in the town of —, in the county of —, do hereby make, pursuant to statute, the following list of all persons

and corporations who have not worked out or commuted for their highway assessment, with the number of days not worked or commuted for by each, and also a list of all the lands of non-residents and persons unknown, which were assessed on any warrant by the commissioners of highways of said town, or added by me according to law, on which the labor assessed has not been performed or commuted for, and the number of days' labor unpaid by each.'

| NAMES OF PERSONS AND CORPORATIONS. | Number of days assessed to each. | Number of days not worked out or commuted. | Charge for such days at \$1.50 per day. |
|------------------------------------|----------------------------------|--|---|
| | | | |
| | | | |

| NAMES OF NON-RESIDENTS AND PERSONS UNKNOWN. | Description of lands. | Number of days assessed to each. | Number of days unpaid by each. | Charge for such days at \$1.50 per day. |
|---|-----------------------|----------------------------------|--------------------------------|---|
| | | | | |
| | | | | |

— COUNTY, ss.:

J. F., of —, being duly sworn, says: That he is the overseer of highways for highway district Number —, in the town of —, in said county; that he has given the notice to appear and work, in the case of the above mentioned persons and corporations, required by section 66 of chapter 568 of the Laws of New York of 1890, and that the labor specified in the above list returned, has not been performed or commuted.

J. F.

(Jurat, as in form No. 32.)

1. See section 66 of chapter 568 of Laws of New York of 1890, as to the above list and the affidavit of overseer to be annexed thereto. The list is directed by the same section to be delivered to the supervisor of the town on or before October 1 in each year. See section 67, id., as to penalty for refusal or neglect of overseer to deliver the list or to make the affidavit as directed and the recovery thereof.

No. 715.

Complaint in action by commissioners of highways for recovery of penalty for refusal, etc., to deliver list of unpaid assessments or to make affidavit.

(Laws of N. Y. of 1890, chap. 568, § 67.)

JUSTICE'S COURT.

| | | |
|---|---|---|
| A. P., etc., as Commissioners of Highways of the town of —, in the county of —, <div style="text-align: center;"><i>agst.</i> J. F.</div> | } | Before Ransom Cooke, Esq., Justice of the Peace. |
|---|---|---|

The complaint of A. P., etc., the above named plaintiffs, respectfully shows: That they are commissioners of highways of the town of —, in the county of —; that on the — day of —, 1—, the defendant, A. F., was duly appointed as overseer of highways for highway district Number —, of the said town, and was duly notified of and duly accepted said office, and entered thereupon and acted as such overseer.

That it was the duty of the defendant as such overseer to make out and deliver to the supervisor of the said town, on or before the first day of October, in the year —, a list of all persons and corporations who had not worked out or commuted for their highway assessment, with the number of days not worked or commuted for by each, and also a list of all the lands of non-residents and persons unknown, which were assessed on his warrant by the commissioners of highways, or added by him, on which the labor assessed had not been performed or commuted for, and the number of days' labor unpaid for by each (which list was accompanied by the affidavit of said defendant that he had given the notice required to appear and work, and that the labor specified in the list returned had not been performed or commuted).¹

And the plaintiffs further show that the defendant has refused (or, neglected) to deliver such list (or, to make an affidavit thereto) as required by law, and that defendant has thereby forfeited the sum of (ten) dollars, and in addition

thereto the sum of — dollars, being the amount of taxes for highway labor in said district remaining unpaid:

Wherefore, the plaintiffs demand judgment against the defendant for the sum of — dollars, in accordance with the statute in such case made and provided, with costs of this action.¹

A. M.,

Plaintiff's Attorney and Agent.

(Office address.)

1. See section 27 of chapter 568 of in action for penalty, see *People v. the Laws of New York of 1890*, as *McCann* (67 N. Y. 506); *Nellis v. N. to this complaint*. As to complaint *Y. C. R. Co.* (30 id. 305).

No. 716.

Annual account to be rendered to commissioner of highways by overseer of highways.

(Laws of N. Y. of 1890, chap. 568, § 69.)

I, F. P., overseer of highways for highway district Number — in the town of —, in the county of —, do hereby render, pursuant to statute, the following account to P. R., one of the commissioners of highways of said town.

1. The names of all persons assessed to work on the highways of said district are as follows, viz.:

| NAMES OF PERSONS. | NAMES OF PERSONS. |
|-------------------|-------------------|
| | |
| | |

2. The names of all those who have actually worked on the highways, with the number of days they have so worked, are as follows, viz.:

| NAMES OF PERSONS. | Number of days actually worked. |
|-------------------|---------------------------------|
| | |
| | |

3. The names of all those from whom penalties have been collected, and the amounts thereof, are as follows, viz.:

| NAMES OF PERSONS FROM WHOM PENALTIES HAVE BEEN COLLECTED. | Amounts of such penalties. |
|--|----------------------------|
| | |
| | |

4. The names of all those who have commuted are as follows, viz.:

| NAMES OF SUCH PERSONS. | Amount of commutation paid by each. |
|------------------------|-------------------------------------|
| | |
| | |

5. The manner in which the moneys arising from such penalties and commutations have been expended by me is as follows, viz.:

18—. Paid M. N. account for repairs to bridge, \$—. (State, in like manner, each item of expenditure, and the person to whom paid.)

6. The names of all persons whose names I have returned to the supervisor as having neglected or refused to work out their highway assessments, with the number of days and amount of tax so returned for each person, are as follows:

| NAMES OF SUCH PERSONS. | Number of days for each. | Amount of tax. |
|------------------------|--------------------------|----------------|
| | | |
| | | |

7. The following is a list of all the lands which I have returned to the supervisor for non-payment of taxes, and the amount of tax on each tract of land so returned, to wit :

| NAME OF OWNER. | Description of land. | Amount of tax. |
|----------------|----------------------|----------------|
| | | |
| | | |

Dated —, 1 —.

F. P.,
Overseer.¹

— COUNTY, ss.:

F. P., of —, being duly sworn, says, that he is the overseer of highways for highway district Number —, in the town of —, in said county, and that the foregoing account, subscribed by him, is true.

F. P.

(Jurat, as in form No. 32.)

1. See subdivision 5 of section 69 of chapter 568 of Laws of New York of 1890, as to this account, which by that section is to be rendered by the overseer on the second Tuesday next preceding the time of holding the annual town meeting in his town, within the year for which he is elected or appointed, and he is required then and there to pay to the commissioners of highways all money remaining in his hands unexpended. See, also, same section as to penalty for refusal or neglect to render such account or pay any balance which then may be due from him.

No. 717.

Notice by overseer of highways to occupant of lands to remove weeds, etc., from bounds of highway.

(Laws of N. Y. of 1890, chap. 568, § 71.)

To A. M. etc., occupant (or, occupants) of lands situated in highway district Number — of the town of —, in the county of —:

You (and each of you) are hereby required, pursuant to statute, to cut, within ten days after receiving this notice,

all weeds, briars and brush growing upon the cultivated (or, inclosed) lands situated in said town and occupied by you, abutting upon the highway leading from — to —, within the bounds of said highway.¹

Dated —, 1—.

Yours, etc.,

F. P.,

Overseer of Highways.

1. See as to this notice and effect thereof, section 71 of chapter 568 of Laws of New York of 1890.

No. 718.

Report of overseer to commissioners of highways, as to weeds, etc., removed from highway.

(Laws of N. Y. of 1890, chap. 568, § 71.)

To the commissioners of highways of the town of —, in the county of —:

I, the undersigned F. P., overseer of highways of highway district Number — of the said town, do hereby, pursuant to statute, respectfully report:

That I, heretofore, and on the — day of —, 1—, gave notice pursuant to statute, in writing, to A. M., etc., (naming occupants notified) occupants of cultivated and inclosed lands and premises situated in said highway district of said town, abutting upon the highway leading from — to —, to cut, within ten days after receiving such notice, all weeds, briars and brush growing upon the lands so occupied by them within the bounds of said highway, and that the said occupants (or, A. M., etc., occupants as aforesaid) did not cut such weeds, briars and brush growing within the bounds of the said highway within the said ten days, after receiving said notice, and that I thereupon employed persons to do the said work, and that the amount expended by me thereon was in all the sum of — dollars.

That said lands occupied by A. M., upon which said labor was performed are owned by said A. M. (or, by C. B.), and the amount expended by me upon said lands was — dollars.

That said lands occupied by M. N., etc. (as above, stating ownership of, and expense incurred upon each lot separately).¹

Dated —, 1—.

F. P.,
Overseer.

(Verification as in form No. 716, substituting the word "statement" for "account" therein.)

Certified to board of supervisors of—county, —, 1—.

(Signatures of commissioners of highways.)

Commissioners of Highways of town of —.

1. See section 71 of chapter 568 of Laws of New York of 1890, as to this report, which is to be made on or before the first day of November in each year, and is to be certified by the commissioners of highways to the supervisor of the town, and the supervisors are to lay the same before the board of supervisors at its next annual meeting, and such board is to include the amounts included therein in the taxes assessed upon the lands upon or against which the labor was performed

TITLE IV.

FORMS RELATING TO LAYING OUT, ALTERING AND DISCONTINUING HIGHWAYS, AND LAYING OUT PRIVATE ROADS.

(Laws of N. Y. of 1890, chap. 568, art. 4.)

ARTICLE I.

FORMS RELATING TO ALTERING, ETC., HIGHWAYS.

(Same statute as above.)

- No. 719.** Application to commissioners of highways for order laying out or opening highways upon land dedicated for that purpose.
- 720.** Order of commissioners of highways, laying out highway upon land dedicated for highway purposes.
- 721.** Application for order of commissioner of highways, laying out highway, accompanied by consent of town board and release of damages.
- 722.** Application to commissioners of highways to lay out new highway or to alter or discontinue old highway.
- 723.** Petition to County Court for appointment of commissioners to determine necessity for laying out highway, etc.
- 724.** Order of County Court appointing commissioners upon petition, form No. 723.

- No. 725. Oath of office to be taken by commissioners appointed by order, form No. 724.
726. Notice of time and place of meeting of commissioners, etc., appointed by order, form No. 724.
727. Affidavit of service of notice of meeting of commissioners appointed to determine the necessity of laying out, etc., highway.
728. Affidavit of applicant to accompany form No. 727.
729. Certificate of decision of commissioners appointed to determine the necessity for laying out, etc., highway, in favor of application.
730. Same certificate denying application.
731. Notice of motion to confirm, etc., commissioners' certificate, form No. 729.
732. Order of County Court confirming, etc., decision of commissioners.
733. Certificate of commissioners of highways that highway should be laid out through orchard, etc.
734. Notice of hearing before County Court, upon certificate of commissioners.
735. Affidavit of service of notice of hearing, form No. 734.
736. Order of County Court confirming certificate of commissioners of highways, form No. 733.
737. Notice of presentation to General Term for confirmation, of order form No. 736.
738. Order of General Term confirming order of County Court affirming certificate of commissioners of highways as to necessity for opening road through orchard, etc.
739. Application for leave to lay out highway upon or through burying ground.
740. Order of County Court directing to whom notice of application to lay out highway through burying ground shall be given.
741. Certificate of disagreement of commissioners of highways of two towns as to laying out, etc., of highway extending into both towns.
742. Order appointing commissioners upon certificate, form No. 741.
743. Report of commissioners appointed to report upon laying out highway between two towns, upon certificate, form No. 741.
744. Order of County Court confirming, etc., report of commissioners, form No. 742.
745. Petition by commissioners of highways for adjustment of difference as to new or altered highway.
746. Order of commissioners of highways for laying out a highway on the line between two towns.
747. Order of commissioners of highways, discontinuing highway not opened and worked within six years.
748. Order to open highway which has been used by the public as such for twenty years or more.
749. Notice to owner or occupant of land taken for a highway to remove his fences.

No. 750. Order of commissioners of highways, directing fences to be removed from highway and highway to be opened and worked.

751. Notice to occupant of land to remove fallen trees from highway.

752. Notice by commissioners of highways to occupant or owner to remove encroachment upon or obstruction to highway.

No. 719.

Application to commissioners of highways for order laying out or opening highway upon land dedicated for that purpose.

(Laws of N. Y. of 1890, chap. 568, § 80.)

The undersigned, a person (or, corporation) assessable for highway labor in the town of —, in the county of —, hereby applies to the commissioners of highways of the said town, (†) to lay out a new highway of the width of — rods,¹ through lands of F. M. (and E. R.,) (*) who intends (or, intend) to dedicate the land hereinafter described for that purpose, and whose release of said land accompanies this application and is to be filed and recorded in the town clerk's office with the order of said commissioners laying out such highway, and to become effective from the time of such filing. Said highway is described as follows: Beginning at, etc. (describing such highway by courses and distances, or by such objects and boundaries as may make the route sufficiently definite and certain).²

Dated —, 1—.

(Signature or signatures.)

1. See note 1 to next form No. 720. this application, and section 82, id.,

2. See section 80 of chapter 568 of as to by whom it may be made.

Laws of New York of 1890, as to

No. 720.

Order of commissioners of highways laying out highway upon land dedicated for highway purposes.

(Laws of N. Y. of 1890, chap. 568, § 80.)

At a meeting of the commissioners of highways of the town of —, in the county of —, held at — in said town, on the — day of —, 1—, all, etc. (as in form No. 681), it is hereby ordered and determined by the said commissioners, (*) that a high-

way be laid out in the said town of the width of — rods,¹ on the application of (naming applicant or applicants) accompanied by a release executed by A. M., the owner (or, A. M. and M. N., etc., the owners) of land for that purpose, dedicated by said owner (or, owners) to said town, for highway purposes therein, which release is to be filed and recorded with this order in the town clerk's office of said town; and the said commissioners have caused a survey of said highway to be made, as follows: The center line of the said highway is to begin at —, and to run thence, etc. (here insert the survey).

In witness whereof the undersigned commissioners of highways of said town have hereunto subscribed their names this — day of —, 1—. ²

(Signatures of commissioners.)

Commissioners.

1. By section 90 of chapter 568 of Laws of New York of 1890, no highway shall be laid out less than three rods in width. Laws of New York of 1890, as to this order, and see as to form of order of commissioners of highways note to form No. 681.

2. See section 80 of chapter 568 of

No. 721.

Application for order of commissioners of highways, laying out highway, accompanied by consent of town board and release of damages by owners of land.

(Laws of N. Y. of 1890, chap 568, § 80.)

As in form No. 720, to (*), and from thence as follows: Whose release of all damages, and the consent of the town board accompany this application, to be filed and recorded herewith in the town clerk's office of said town; which said highway is described as follows: Beginning at, etc. (describing such highway as in form No. 719).¹

Dated —, 1—.

(Signature or signatures.)

(Annex consent, and release or releases.)

1. See section 80 of chapter 568 of Laws of New York of 1890, as to this application, which may be granted with the consent of the town board, when the consideration for such release, as agreed upon between such commissioners and owners, shall not, in any one case, from any one claimant, exceed \$100, and from all claimants \$500. An order of such commissioners, as above provided, is final.

No. 722.

Application to commissioners of highways to lay out new highway, or to alter or discontinue old highway.

(Laws of N. Y. of 1890, chap. 568, § 82.)

As in form No. 719, to (†), and from thence as follows: To lay out a new highway of the width of — rods,¹ through lands of F. M. (and E. R.), commencing at, etc. (here insert description by courses and distances, or by objects and boundaries, so as to render the proposed route sufficiently definite and certain).²

Dated —, 1—.

(Signature of applicant.)

[Or, in case of application for alteration or discontinuance of highway, as in form No. 719, to (†), and from thence as follows: To alter (or, discontinue) the highway leading from the house of E. F. to the house of G. H., in said town, (as follows: Describe the proposed alteration in like manner as above specified in case of laying out new road).³ The proposed alteration passes through lands of F. M.]

Dated —, 1—.

(Signature of applicant.)

1. No highway can be laid out less than three rods in width. (Laws of N. Y. of 1890, chap. 568, § 90.)

3. Insert the words in parenthesis only when the application is to alter a highway.

2. See, as to this application, section 82 of chapter 568 of Laws of New York of 1890.

No. 723.

Petition to County Court for appointment of commissioners to determine necessity for laying out, etc., highway.

(Laws of N. Y. of 1890, chap. 568, § 83.)

To the County Court of the county of — :

The petition of A. B. (or, the A. B. Co.) respectfully shows: That he (or, it) is a person (or, a corporation) assessable for highway labor in the town of —, in the county of

—; that within thirty days before the date of this petition, and on the — day of —, 1—, your petitioner applied in writing to the commissioners of highways of said town for the laying out, etc., of a highway in said town, described in said application as follows, to wit: (describing same) (or, a copy of which application is hereto annexed); that said application was made in good faith; that the land mentioned and described in said application is not dedicated to said town for highway purposes, and has not been released by the owner (or, owners) thereof, nor have the damages been released by the owners thereof according to law.

Your petitioner therefore prays that three commissioners may be appointed by this court pursuant to statute, to determine upon the necessity of such highway proposed to be laid out (or, altered; or, to the uselessness of the said highway, proposed to be discontinued), and to assess the damages by reason of the laying out and opening (or, altering; or, discontinuing) of such highway; (that at a meeting of the board of (trustees) of your petitioner, duly convened, a resolution was passed authorizing and directing your petitioner to make this application).¹

(That no previous application has been made by your petitioner for such appointment).²

Dated —, 1—.

(Signature of petitioner.)

STATE OF NEW YORK, } ss.:
County of —,

J. W., of —, being duly sworn, says that he is the (president of the (name of corporation) the) petitioner named in the foregoing petition; that said petition is true to his knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

(Jurat, as in form No. 32.)

(Signature of petitioner.)

1. See section 83 of chapter 568 of Laws of New York of 1890 as to this petition. See as to filing papers, section 98 of same chapter.

2. See rule 2 of General Rules of Practice in New York State.

See chapter 344 of Laws of 1897, amending said section 83.

No. 724.

Order of County Court appointing commissioners upon petition, form No. 723.

(Laws of N. Y. of 1890, chap. 568, § 81.)

At a term of the County Court of — county, held at the
(court house) in the (city) of —, in and for said county,
on the — day of —, 1—.

Present — Hon. J. B., County Judge.

In the Matter of the Petition
of A. B. (or, the A. B.
Co.,) for the appointment of
commissioners to determine
upon the necessity for lay-
ing out (or, altering ; or, dis-
continuing), highway, in the
town of —.

On reading and filing the petition of A. B. (or, the A. B. Co.,) a person (or, corporation) assessable for highway labor in the town of —, in the county of —, dated — 1—, praying for the appointment of three commissioners by this court, pursuant to statute, to determine upon the necessity of a highway in said town, described in said petition, as follows: (describing same) proposed to be laid out (or, altered, or, to the uselessness of a highway in said town described in said petition as follows: (describe same) and proposed to be discontinued) and to assess the damages by reason of the laying out and opening [or, the altering (or, discontinuing)] of such highway :

It is hereby ordered, on motion of P. F., counsel for said petitioner, that P. L. of the town of —, G. H., of the town of —, and I. J., of the town of —, residents of said county but not of the town wherein said highway is located, be and they are hereby appointed as commissioners to determine upon the necessity of the laying out (or, alteration) of such highway (or, as to the uselessness of the said high-

way proposed to be discontinued), and to assess the damages by reason of the laying out, and opening (or, altering; or, discontinuing) the said highway.¹

1. See section 84 of chapter 568 of and notes thereto. See section 98 of Laws of New York of 1890, as to same chapter as to filing papers this order, and see also form No. 723,

No. 725.

Oath of office to be taken by commissioners appointed by order, form No. 725.

(Laws of N. Y. of 1890, chap. 568, § 84.)

(Title of proceeding, as in form No. 724.)

COUNTY OF —, ss.:

We do severally solemnly swear (or, affirm) that we will support the Constitution of the United States and the Constitution of the State of New York, and that we will faithfully discharge the duties of the office of commissioners appointed by order of the County Court in the above entitled proceeding, dated — 1 —, according to the best of our ability.¹

(Signatures of Commissioners.)

(Jurat, as in form No. 32.)

1. See section 84 of chapter 568 of duties of the commissioners. See Laws of New York of 1890, as to section 98 of same chapter as to this oath, and as to the powers and filing papers.

No. 726.

Notice of time and place of meeting of commissioners, etc., appointed by order, form No. 724.

(Laws of N. Y. of 1890, chap. 568, § 85.)

(Title of proceeding, as in form No. 724.)

To all whom it may concern:

Notice is hereby given that a meeting of the commissioners appointed pursuant to the petition of A. B., by an order of the — County Court, bearing date on the

— day o. —, 1—, to determine the necessity for the laying out and opening of a highway in the town of —, in the said county described as follows: (describe same) [or, the alteration of the highway in said town leading from —, to —, as follows: (describe alteration); or, the uselessness of the highway in said town proposed to be discontinued, leading from —, to —,] will be held at —, on the — day of —, 1—, at — o'clock in the — noon, to hear the commissioners of highways of said town, and others interested therein. Such highway runs through the tracts or parcels of land of M. N., O. P., etc.¹

Dated —, 1—.

A. B.,
Applicant.

1. See section 85 of chapter 568 of Laws of New York of 1890, as to this notice and its contents, which notice is required thereby to be posted up in not less than three public places of the town, eight days previous to the meeting, and also in like time, to be personally served on the owner or occupant of the land, if they reside in the town, or by leaving the same at their residence with a person of mature age; if they do not reside in the same town, or service cannot be made, a copy thereof is to be mailed to such owner and occupant, if their post-office address is known to the applicant or ascertainable by him upon reasonable inquiry. For affidavit of such service, see next form No. 727. See section 98 of same chapter as to filing papers.

No. 727.

Affidavit of service of notice of meeting of commissioners appointed to determine upon the necessity of laying out, etc., highway.

(Laws of N. Y. of 1890, chap. 568, § 85.)

(Title of proceeding, as in form No. 724.)

COUNTY OF —, ss.:

A. M., of —, being duly sworn, says that on the — day of —, 1—, he posted up copies of the annexed notice in (three) public places in the town of —, in the county of —, and that on the same day he served said notice on M. N., etc., owner (or, owners), and occupant (or, occupants) of the lands therein mentioned, residing in said town,

by delivering a copy thereof to him (or, to each of them) personally and leaving the same with him (or, them) [or, by leaving the same at his residence (or, at their respective residences), with a person (or, persons) of mature age].

That on the same day he mailed copies of such notice to F. P., one of said owners (or, occupants) and a non-resident of said town [or, a resident of said town, upon whom service could not otherwise be made by reason of (stating reason)] in the post-office at —, directed to said F. P., at —, his post-office address, and paid the postage thereupon.

That deponent did not know the post-office address of C. R., one of said owners (or, occupants) mentioned in said notice, who does not reside in said town [or, upon whom personal service, or service by leaving said notice at his residence could not be made for the reason, etc. (stating same)], and that the post-office address of said C. R. could not be ascertained by deponent upon reasonable inquiry, to wit: (stating inquiries made). That all of said services, posting and inquiries were made by direction of A. B., the applicant mentioned in said notice.¹

A. M.

(Jurat, as in form No. 32.)

1. See section 85 of chapter 568 of affidavit. As to filing papers, see Laws of New York of 1890, as to this section 98, id.

No. 728.

Affidavit of applicant to accompany form No. 727.

(Laws of N. Y. of 1890, chap. 568, § 85.)

COUNTY OF —, ss.:

A. B., of —, being duly sworn, says that he was unable to mail a copy of the annexed notice to C. R., one of the owners (or, occupants) of lands mentioned therein, who does not reside in the town of — [or, a resident of said town, upon whom personal service thereof or service thereof by leaving a copy of the same at his residence could not be made, for the reason that, etc. (stating same)], as his post-office address was not known to deponent, and could not be

ascertained by him upon reasonable inquiry made by his direction by A. M., as stated in his annexed affidavit.¹

(Jurat, as in form No. 32.)

A. B.

(Annex affidavit, form No. 727.)

1. See section 85 of chapter 568 of affidavit. See section 98, id., as to Laws of New York of 1890, as to this filing papers

No. 729.

Certificate of decision of commissioners appointed to determine the necessity for laying out, etc., highway in favor of application.

(Laws of N. Y. of 1890, chap. 568, §§ 84, 86, 88.)

(Title of proceeding, as in form No. 724.)

We, the undersigned, commissioners appointed by order of the — County Court, in the above entitled proceeding, to determine the necessity for laying out (or, altering, etc.) the highway (or, the uselessness of the highway) mentioned and described in the annexed notice, which highway passes through the lands of M. N., O. P. and P. R., having appeared at the time and place specified in said notice, and having taken the constitutional oath of office annexed hereto, and having proceeded to and personally examined the route of such highway, and heard all the reasons that were offered for and against the laying out of (or, alteration (or, discontinuance) of) the same, do hereby certify that we are of the opinion, and have determined, and do hereby determine, that the laying out (or, alteration) of the said highway applied for and described in the annexed notice is (*) necessary and proper (or, that the highway proposed to be discontinued and described in the annexed notice is useless).

And we further certify that we having viewed the premises and heard the allegations of the parties and the evidence of the witnesses, do thereupon determine and assess the damages required to be assessed on the laying out, etc., of said highway, as follows, to wit:

The damages of M. N., at the sum of — dollars.

The damages of O. P., at the sum of — dollars.

The damages of P. R., at the sum of --- dollars.

And we further certify that we have reduced to writing all oral evidence given before us upon the subject of the assessment of damages, which evidence is hereto annexed, and have made duplicates of this certificate.

In witness whereof, we have hereunto set our hands this — day of —, 1—. ¹

(Signatures of commissioners.)

Commissioners.

(Annex minutes of evidence, oath and notice.)

1. See sections 84 and 86 of chapter 568 of the Laws of New York of 1890, as to this certificate; and see *People, ex rel. Mann, v. Mott* (2 Hun, 672; aff'd, S. C., 60 N. Y. 649); *Woolsey v. Tompkins* (23 Wend. 324); *People, ex rel. Thomas, v. Commissioners of Milton* (37 N. Y. 364), decided under former statutes, repealed by that chapter.

By section 87 of said chapter 568 the owner of lands within the bounds of a highway discontinued may inclose the same and have the exclusive use thereof, and the benefits resulting therefrom may be deducted in the assessment of damage caused by the laying out of a highway

through his other lands in place of the discontinued highway.

The commissioners are required by section 84, above referred to, to make duplicate certificates of their decision, and file one in the town clerk's office of the town, and the other, with the minutes and evidence, in the county clerk's office of the county in which the highway or proposed highway is located.

As to costs in cases of assessments of damages by commissioners appointed by the court, and as to compensation of such commissioners, see section 92 of same chapter. As to filing papers, see section 98, id.

No. 730.

Certificate of decision of commissioners appointed to determine the necessity for laying out, etc., highway, denying application.

(Laws of N. Y. of 1890, chap. 568, §§ 84, 88.)

As in last form No. 729, to (*) and from thence as follows: not necessary or proper (or, that the highway proposed to be discontinued and described in the annexed notice is not useless). ¹

In witness, etc., (as in form No. 681.)

(Signatures of commissioners.)

Commissioners.

1. See sections 84 and 88 of chapter 568 of Laws of New York of 1890, as to this certificate, and see note to last form, No. 729. See section 98 of same chapter as to filing papers.

No. 731.

Notice of motion to confirm, etc., commissioners' certificate, form No. 730.

(Laws of N. Y. of 1890, chap. 568, § 89.)

(Title of proceeding, as in form No. 724.)

Take notice, that the undersigned, a person interested in the above entitled proceeding as applicant therein [or as a property owner, (or, state other interest)] will apply to the County Court of — county, at a term of said court to be held at, etc., on, etc., at the opening of the court on that day, (or, at — o'clock in the — noon, of that day) or as soon thereafter as counsel can be heard for an order confirming (or, vacating, or, modifying) the decision of the commissioners appointed in said proceeding by order of said court dated —, 1 —, which decision was filed in the town clerk's office of the town of —, on the — day of —, 1 —, and for such other or further relief as may be proper.

That said motion will be made upon the said report, a copy of which is herewith served upon you (and upon all other papers and proceedings in said proceeding, including the testimony annexed to the duplicate of said decision filed in the county clerk's office of said county, on the — day of —, 1 —).¹

Yours, etc.,

A. M.,

Attorney for said —.

To (naming adverse parties).

(Office address.)

1. By section 89 of chapter 568 of Laws of 1890 this application may be made by any party interested in the proceeding within thirty days after the decision of the commissioners shall have been filed in the town clerk's office and is to be brought on upon the service of papers upon adverse parties in the proceeding, according to the usual practice of the court in actions and special proceedings, pending therein; the court may confirm, vacate or modify the decision upon such application and the

decision of the County Court shall be final, excepting that a new hearing may be ordered in case the decision is vacated, before the same or other commissioners. If no such motion is made the decision of the commissioners shall be deemed final. If the final decision is adverse to the applicant, no other application for laying out, altering or discontinuing the same highway shall be made within two years. See as to filing papers section 98 of same chapter.

No. 732.**Order of County Court confirming the decision of commissioners, form No. 731.**

(Laws of N. Y. of 1890, chap. 568, § 89.)

At, etc., as in form No. 724.

(Title of proceeding, as in form No. 724.)

On reading the decision of the commissioners appointed by this court in the above entitled proceeding by order dated —, 1—, determining that the (alteration of the) highway mentioned in the petition therein is necessary [or, that the highway proposed to be discontinued herein is (not) useless] which decision bears date on the — day of —, 1—, and was filed in the town clerk's office of the town of —, on the — day of —, 1—, and a duplicate thereof was filed in the county clerk's office of the county of —, with the minutes of the evidence taken by them and proceedings had before them; and on reading and filing (name other papers read upon application) together with notice of this motion and proof of due service thereof and of a copy of said decision upon the adverse parties to this proceeding, and on motion of A. P., of counsel for (name moving party), and after hearing, etc., and on reading and filing (name any opposing affidavits, etc.),

It is ordered, that the said decision be and the same is hereby, in all respects, confirmed [or, vacated; or, modified in the following particulars (stating same)].

And it is further ordered, pursuant to statute, that another hearing of said matter be had before the said commissioners (or, before F. P., N. C. and R. F., who are hereby appointed commissioners for the purpose of such rehearing).¹

And it is further ordered, that, etc. (insert any provisions regarding costs).²

1. See section 89 of chapter 568 of Laws of New York of 1890, cited in note 1 to last form, No. 731, as to this order. As to entry and filing of same, see section 98, id.

2. By section 152 of chapter 568 of Laws of New York of 1890, costs of

a motion to confirm, vacate or modify the report of commissioners appointed by the court to lay out, alter or discontinue a highway, may be allowed in the discretion of the court not exceeding fifty dollars.

No. 733.

Certificate of commissioners of highways, that highway should be laid out through orchard, etc.

(Laws of N. Y. of 1890, chap. 568, § 90.)

To the County Court of the county of — :

We, the undersigned, commissioners of highways of the town of —, in the county of —, do hereby certify, pursuant to statute, that the public interest will be greatly promoted by the laying out and opening of a highway in said town through the orchard (or, garden; or, grape vineyard) of A. B., a resident of the town of —, in the county of —, which said orchard is of the growth of (four) years and upwards [or, which garden; (or, grape vineyard) has been cultivated for (one) year and upwards and used in good faith for vineyard purposes] [or, through the building, to wit: the dwelling house owned by A. B.; or, through (a yard or inclosure necessary to the use or enjoyment of) the fixtures (or, erections) for the purposes of trade (or, manufactures), to wit: (describing said fixtures or erections) of A. B.], which said orchard, etc., is situated in the — of —, in the town of —, and is a part of the lot of said A. B., (which is occupied by C. D.)¹ and is described as follows, to wit: (insert brief description of lot).

That said A. B. has not consented to the opening of said highway through said orchard, etc., and that commissioners appointed by the County Court of — county, pursuant to section 84 of chapter 568 of the Laws of New York of 1890, have certified, according to law, that said highway is necessary.

In witness, etc. (as in form No. 681).²

(Signatures of commissioners.)

Commissioners.

1. Insert these words in parenthesis when the owner does not reside in the county.

2. See as to this certificate and proceedings thereupon, section 90 of

chapter 568 of Laws of New York of 1890, and note 1 to next form No. 733. As to filing papers, see section 98 of same chapter. See amendment to said section 90 by chap. 508 of Laws of 1895.

No. 734.

Notice of hearing before County Court, upon certificate of commissioners, form No. 733.

(Laws of N. Y. of 1890, chap. 568, § 90.)

(Title of proceeding, as in form No. 736.)

To. A. B., owner (or, C. D., occupant) of the premises mentioned in annexed certificate:

You are hereby notified to appear before the County Court of — county, at a term of said court to be held at, etc., on, etc., at the opening of the court on that day (or, at — o'clock in the — noon of that day), or as soon thereafter as counsel can be heard, to attend the hearing in the matter of the certificate of the undersigned, commissioners of highways of the town of —, in the county of —, made in the above proceeding, a copy of which is hereto annexed.¹

Dated —, 1—.

(Signatures of commissioners.)

(Commissioners.)

(Annex copy certificate.)

1. See, as to this notice, section 90 of chapter 568 of Laws of New York of 1890. See, also, as to proceeding generally, *People, ex rel. Bodine, v. Goodwin* (5 N. Y. 568); *Noyes v. Chapin* (6 Wend. 461); *People, ex rel. Ottman, v. Commrs. of Seward* (27 Barb. 94); *People, ex rel. Martin, v. Albright* (14 Abb. 305; S. C., 23 How. Pr. 396); *Ex parte Clapper* (3 Hill, 458); *Mohawk and Hudson Railroad Co. v. Artcher* (6 Paige, 83); *Lansing v. Caswell* (4 id. 519); *People, ex rel. Miller, v. Comes* (1 Hun, 530); *Carris v. Commissioners of Waterloo* (2 Hill, 443); *People, ex rel. Williams, v. Kingman* (24 N. Y. 559); *People, ex rel. Cooke, v. Commissioners of Greenburgh* (57 id. 519); *People, ex rel. Stanton, v. Horton* (8 Hun, 357); *Matter of James* (43 id. 67); *People, ex rel. Waterman, v. Schellenger* (32 N. Y. State Rep. 353; S. C., 10 N. Y. Supp. 947), decided under previous statutes repealed by chapter 568 of Laws of 1890. As to filing papers, see section 98, id.

No. 735.**Affidavit of service of notice of hearing, form No. 734.**

(Laws of N. Y. of 1890, chap. 568, § 90.)

(Title of proceeding, as in form No. 736.)

— COUNTY, ss.:

M. F., of —, being duly sworn, says: That on the — day of —, 1—, in the town of —, in the county of —, he served the annexed notice on A. B., the owner (or, upon C. D., the occupant) of the premises mentioned in said notice, and to whom said notice is directed, by delivering a copy of said notice to said A. B. (or, C. D.) personally, and leaving the same with him. That he knew the person so served to be the said A. B. (or, C. D.).¹

M. F.

(Jurat as in form No. 32.)

1. See section 90 of chapter 568 of Laws of New York of 1890, as to this affidavit, and see generally as to proceeding, note 1 to form No. 734.

No. 736.**Order of County Court confirming certificate of commissioners of highways, form No. 733.**

(Laws of N. Y. of 1890, chap. 568, § 90.)

At, etc., as in form No. 724.

In the matter of the certificate of the commissioners of highways of the town of —, in the county of —, as to the necessity of laying out a highway through the (orchard) of A. B., in said town.

On reading and filing the certificate of B. F., etc., commissioners of highways of the town of —, in the county of —, dated —, 1—, by which it appears that the public interest will be greatly promoted by the laying out

and opening of a highway through the orchard (etc.) of A. M., a resident of the (said) town of —, in the county of —, and on reading the certificate of the commissioners appointed by this court by order of —, 1—, that such highway is necessary, together with the proofs and proceedings taken and had before said last mentioned commissioners, and on filing due proof of service of a copy of said certificate of said commissioners of highways and of notice to appear at this term of this court upon said A. M., (or, upon C. D., the occupant of said land) (more than) eight days since, and on motion of E. F., counsel for said commissioners, after hearing G. H., counsel for said A. M. (or, no one appearing to oppose), and on filing (describe any opposing papers):

It is hereby ordered that the decision of said commissioners of highways, contained in said certificate, be and the same is hereby in all respects affirmed, and that the highway mentioned and described in said certificates be laid out and opened, this court having deemed the same to be necessary and proper.¹

1. See section 90 of chapter 568 of as to this proceeding generally. See Laws of New York of 1890, as to this section 98, id., as to filing and entry order; and see note to form No. 731, of order.

No. 737.

Notice of presentation to General Term for confirmation, of order, form No. 736.

(Laws of N. Y. of 1890, chap. 568, § 90.)

(Title of proceeding, as in form No. 736.)

SIR — Take notice that the order of the County Court of — county, made in the above entitled proceeding, dated — 1—, a copy of which is hereto annexed and herewith served upon you, will be presented by the commissioners of highways of the town of —, in the county of —, for confirmation, and a motion will be made for the confirmation thereof, at a General Term of the Supreme Court, in the — judicial department, to be held at the — of —, on the

— day of —, 1—, at — o'clock in the — noon of that day (or, at the opening of the court on that day), or as soon thereafter as counsel can be heard.

That said motion will be made upon said order, with the certificate and proofs upon which it was granted, certified by said County Court, to said General Term of the Supreme Court¹ (copies of which certificate and proofs are herewith served upon you.)²

Yours, etc.,
F. S.

Attorney for said commissioner of highways.
(Office address.)

To (G. P., Attorney for said) A. B. or C. D.

1. See section 90 of chapter 568 of Laws of New York of 1890, as to this notice, and see note 1 to form No. 731, generally as to this proceeding. As to filing papers see section 98, id. 2. It may not be necessary to serve copies of the certificate and proofs with the notice of motion.

No. 738.

Order of General Term confirming order of County Court affirming certificate of commissioners of highways as to necessity for opening road through orchard, etc.

(Laws of N. Y. of 1890, chap. 568, § 90.)

At a General Term of the Supreme Court, held at —, in the (city) of —, on the — day of —, 1—, in and for the — judicial department.

Present — Hon. F. P., Presiding Justice, and Hons. W. M. and P. C., Justices.

(Title of proceeding, as in form No. 736.)

On reading and filing the order of the County Court of — county, dated —, 1—, made in the above entitled proceeding, affirming the certificate of the commissioners of highways of the town of —, in the county of —, together with proof of due service of notice of this motion upon A. M., etc. (naming persons on whom notice has been served), and upon reading and filing (name other papers

read), and on motion of N. P., counsel for the said commissioners, and after hearing R. P., counsel for said A. B., etc., the (owners) of the premises mentioned in said certificate and on reading and filing (name papers filed in opposition to motion) (or, no one appearing to oppose):

It is hereby ordered, that the said order of the said County Court of — county be and the same is hereby (confirmed).

And it is further ordered, that (add any further provisions as to costs, etc., that may be required).¹

1. See section 90 of chapter 568 of Laws of New York of 1890, as to this order. If the General Term shall confirm the order of the County Court the commissioners of highways shall then lay out and open such highway as in other cases.

planted, or to buildings, fixtures, erections, yards or inclosures, made or placed on such land after an application for the laying out and opening the highway shall have been made.

See, also, note 1 to form No. 731, generally, as to this proceeding, and

The provisions of said section 90 are not applicable to vineyards section 98, id., as to filing papers.

No. 739.

Application for leave to lay out highway upon or through burying ground.

(Laws of N. Y. of 1890, chap. 568, § 91.)

To the County Court of — county:

The petition of E. M., etc. (commissioners of highways of the town of —, in the county of —),¹ respectfully shows:

That your petitioners are such commissioners of highways (or, are residents of said town and assessable for highway labor in said town). That they desire to lay out a highway in said town (upon the application of R. F.) (or, that a highway in said town should be laid out) from — to — (and have applied to the commissioners of highways of said town to lay out the same). That said highway will pass through the burying ground situated upon the farm belonging to R. P., in said town (describing same). That the remains of — persons are interred therein, and as nearly as your petitioners can ascertain the names of the said persons were (naming them) and, so far as your petitioners have been able

to ascertain the names and residences of the relatives of said deceased persons are as follows: (stating them) [add any further particulars to enable the court to determine to whom notice should be given].²

And your petitioners therefore pray, etc.

Dated —, 1—. (Signatures of applicants.)

(Verification, as in form No. 723.)

- | | |
|---|--|
| <p>1. The statute does not provide by whom the application should be made.</p> <p>2. See section 91 of chapter 568 of Laws of 1890, as to this application.</p> | <p>By that chapter, chapter 843 of 1868 upon the same subject is repealed.</p> <p>See as to filing and recording papers, section 98, id.</p> |
|---|--|

No. 740.

Order of County Court directing to whom notice of application to lay out highway through burying ground shall be given.

(Laws of N. Y. of 1890, chap. 568, § 91.)

At, etc., as in form No. 724.

In the matter of laying out
and constructing a highway
through the burying ground
in the town of —, situated,
etc. (briefly describing it).

On reading and filing the petition, dated —, 1—, of E. M., etc. (commissioners of highways of the town of —, in the county of —), praying (state prayer of petition, form No. 739), and on motion of C. E., counsel for said E. M.,

It is hereby ordered, that notice of the application to be made upon said petition be given to (naming parties and giving their residences).¹

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| <p>1. See section 91 of chapter 568 of Laws of New York of 1890, as to this</p> | <p>order, and see section 98, id., as to filing and entry of same.</p> |
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No. 741.

Certificate of disagreement of commissioners of highways of two towns as to laying out, etc., of highway extending into both towns.

(Laws of N. Y. of 1890, chap. 568, § 94.)

At a meeting of the commissioners of highways of the town of —, in the county of — [or, of the (trustees) of

the (village) of —, in the county of —, having the powers of commissioners of highways], and of the commissioners of highways of the town of —, in the county of — [or, of the (trustees) of the (village) of —, in the county of —, having, etc. (as above)], held at the said (town) of —, on the — day of —, 1—, upon five days' written notice, specifying the time and place, the said (commissioners) having differed relating to the laying out of a new highway hereinafter mentioned and described (or, state other subject of difference), (*) and the said (commissioners) having failed to agree, at said meeting, relating to (the laying out of said highway) extending into both of said (towns), to wit: The highway leading from the house of A. B., in said (town) of —, to the house of C. D., in said town of —.

Now, therefore, we, the said (commissioners of highways) do hereby certify, pursuant to statute, to the County Court of — county (or, to the Supreme Court),¹ that we cannot agree as to the (laying out of said highway).

In witness whereof, we have hereunto set our hands this — day of —, 1—.

(Signatures of commissioners, etc.)²

Commissioners of Highways of the town
of —, in the county of —.

(Signatures of Commissioners.)

Commissioners of Highways of the town
of —, in the county of —.

[Or, in case they agree upon the highway at said meeting, proceed as above to (*), and from thence as follows: And the said (commissioners) having agreed, at said meeting, upon the (alteration of) said highway, it is hereby ordered and determined by the said (commissioners) that a highway be laid out extending from (the house of A. B., in said (town) of —, to the house of C. D.), in said town of —, according to a survey thereof which the said (commissioners) have caused to be made, as follows; (insert survey), and that said line above described be the center of said highway, and that

said highway be of the width of (three) rods (or, state other determination.)]

In witness, etc. (as above).

(Signatures of commissioners, etc.)

Commissioners of Highways of the town
of —, in the county of —.

(Signatures of commissioners.)

Commissioners of Highways of the town
of —, in the county of —.

1. See note 3 to this form as to the court.

2. See section 94 of chapter 568 of Laws of New York of 1890, by which act, chapter 16 of part 1 of the Revised Statutes is repealed, as to this certificate. See, also, *People, ex rel. Clarkson, v. Nelson* (26 How. Pr. 347). And see section 98, *id.*, as to filing same.

3. By the same section either or both of the boards may certify to the fact of their disagreement to the County Court of the county if the proposed highway is all in one county or if in different counties, or if the county judge is disqualified or unable to act, to the Supreme Court.

No. 742.

Order appointing commissioners upon certificate, form No. 741.

(Laws of N. Y. of 1890, chap. 568, § 94.)

At, etc., as in form No. 724.

In the matter of the appointment of commissioners, upon the disagreement of (commissioners of highways) of the (town) of —, in the county of —, and of the town of — in the (said) county of —, as to laying out a highway (or, altering a highway) extending into both towns.

On reading and filing the certificate of the (commissioners of highways) of the (town) of —, in the county of —,

and of the (town) of — in the (said) county of —, dated —, 1—, that the said commissioners cannot agree as to the laying out (or, altering) of the highway leading from (the house of A. B., in said town of —, to (the house of C. D.) in said town of —, mentioned in said certificate, and upon the application of G. H., of counsel for the said commissioners of highways, it is hereby ordered, pursuant to the statute in such case made and provided, that C. R., residing in the town of —, in (said) county of —, and G. I., residing in the town of —, in (said) county of — and M. L., residing in the town of —, in the said county of —, freeholders, be and they are hereby appointed as commissioners, who shall, upon due notice to all persons interested, view the said road and take such evidence as they shall deem proper, and shall have power and authority to decide, subject to the approval of this court, in the manner provided by law, all questions that shall arise on such hearing as to the laying out (or, altering) said highway, its location, width, grade and character of road and road-bed, or any point that may come up relating thereto; and in case they decide to open (or, alter) said highway, they shall ascertain and appraise the damages, if any, to the individual owners and occupants of the lands through which said highway (or, altered highway) is proposed to pass, and shall report such evidence and decision to this court, with their assessment or award of damages, if any, with all convenient speed.¹

1. See section 94 of chapter 568 of way is located; or if it be between Laws of New York of 1890, as to two counties, then freeholders of this order. The commissioners are another county. As to entry of or required to be freeholders of the order and recording same, see section county, not residents of the same 98, id.
town, village or city where the high-

No. 743.

Report of commissioners appointed to report upon laying out highway between two towns as to which the commissioners of highways of the towns have certified to their disagreement.

(Laws of N. Y. of 1890, chap. 568, § 94.)

(Title of proceeding, as in last form, No. 742.)

To the County Court of — county (or, to the Supreme Court):

We, the undersigned, commissioners duly appointed by order of said court, made in the above entitled proceeding, dated —, 1—, do hereby respectfully report:

That having given due notice to all the persons interested, we have viewed the highway mentioned in said order, and have taken such evidence as we have deemed proper, and that we have decided to open (or, alter) the said road according to a survey which we have caused to be made thereof, as follows: Beginning, etc. (here insert survey) and that the said line above described be the center line of said highway, and that the said highway be of the width of (three) rods.

And we further report that we have ascertained and appraised the damages to which the individual owners and occupants of the lands through which said highway as laid out (or, altered) is proposed to pass are entitled as follows:

The damages to which M. N. is entitled, at the sum of — dollars.

The damages to which C. P. is entitled, at the sum of — dollars.

The damages, etc. (as above, as to each owner and occupant).

(Or, that none of the individual owners or occupants of lands through which such highway as laid out (or, altered) is proposed to pass, are entitled to be awarded any damages therefor.)

We have annexed to this our report the evidence taken by us as aforesaid, which is marked "Schedule A."

And we further report that the number of days actually employed by us as such commissioners is — days each.

All of which is respectfully submitted.¹

Dated —, 1—.

(Signatures of commissioners.)

Commissioners.

1. See section 94 of chapter 568 of this report, and see section 98, id., as Laws of New York of 1890, as to filing same.

No. 744.

Order of County Court confirming etc., report of commissioners, form No. 743.

(Laws of N. Y. of 1890, chap. 568, § 94.)

At, etc., as in form No. 724.

(Title of proceeding, as in form No. 742.)

On reading and filing the report of the commissioners heretofore appointed by order of this court, made in the above entitled proceeding, dated —, 1 —, and on motion of P. R., counsel for the commissioners of highways by whom application was made for the appointment of said commissioners, and due notice of this application having been given to the parties interested and who have appeared in this proceeding, and after hearing M. P., of counsel for said commissioners of highways, and R. T., of counsel for, etc., (or no one appearing to oppose) and on reading (name any paper read in opposition to motion):

It is hereby ordered, that said report be and the same is hereby in all respects confirmed (or, state other disposition of the report.)¹

1. See section 94 of chapter 568 of Laws of New York of 1890, as to this order. The court may confirm, modify or set aside the report in whole or in part, and may order a new appraisal by the same or other commissioners, and shall decide all questions that may arise before it. All orders and decisions made in the matter shall be filed in the county clerk's office of each county where the highway is located, and shall be duly recorded therein. See, also, note to form No. 739, as to the proceeding generally; and as to filing papers, see section 98, id.

No. 745.

Petition by commissioners of highways for adjustment of differences as to new or altered highway.

(Laws of N. Y. of 1890, chap. 568, § 95.)

To the County Court of — county (or, to the Supreme Court):¹

The petition of A. M., etc., commissioners of highways of the town of —, in the county of — (or, otherwise describe petitioners), respectfully shows:

That they are such commissioners, etc. That they desire to make a new (or, an altered) highway, extending beyond the bounds of said town, etc., to wit: a better highway than is usually made for a common highway with a special grade of (state same) [or, with a special road-bed, drainage, etc., describing same]. That they are willing to bear the whole [or, a part, to wit: (state what part)] of the expense thereof beyond such bounds, but that they cannot agree in regard to the same, with, etc. (stating parties and points of difference, etc.).

And your petitioners pray that this court will make an equitable adjustment of the matters aforesaid, and will direct, that in consideration of the payment of such portion of the additional expense by the said (town) of —, as shall be equitable, its officers, contractors, servants and agents may go into said town, etc., of —, and make the grade and road-bed, and do whatsoever may be necessary and proper for the completion of such better highway, advancing the money to do so, and that such further and other proceedings may be had as are authorized by law and by the statute in such case made and provided.¹

Dated —, 1—.

(Signatures of petitioners.)

(Verification by one or more of the petitioners, as in form No. 723.)

1. See section 95 of chapter 568 of Laws of New York of 1890, as to this proceeding and petition. By that act chapter 16 of part first of the Revised Statutes, relating to the subject, is repealed. Commissioners are to be appointed under this petition and their proceedings are to be conducted in the manner prescribed by section 94 of said chapter 568. See forms Nos. 742-744. Also see section 98, id., as to filing papers.

No. 746.

Order of commissioners of highways for laying out a highway on the line between two towns.

(Laws of N. Y. of 1890, chap. 568, § 97.)

At a meeting of the commissioners of highways of the towns of —, and —, in the county of —, held in the said town of —, on the — day of —, 1 —, for the purpose of laying out a highway upon the line between the said two towns, it is ordered and determined by the said commissioners that a highway be laid out on the line between the said towns, or as near thereto as the convenience of the ground will admit, according to a survey thereof which the said commissioners have caused to be made, as follows, (insert survey) and that the said line, as above described, be the center of the said highway, and that the said highway be of the width of (three) rods.

And it is further ordered, that the said highway be divided into (two) highway districts, as follows: That part thereof from — to —, shall be one of the said highway districts, and shall be allotted to the said town of —, and the residue of said highway shall be the other of said highway districts, and shall be allotted to the said town of —.

In witness whereof, the said commissioners, etc., (as in form No. 720).¹

(Signatures of commissioners.)

Commissioners of Highways of the town of —.

(Signatures of commissioners.)

Commissioners of Highways of the town of —.

1. See section 97 of chapter 568 of Laws of New York of 1890. Each district is by that section to be considered as wholly belonging to the town to which it shall be allotted, for the purpose of opening and improving the highway, and for keep-

ing it in repair; and the commissioners of highways shall cause the highway, and the partition and allotment thereof to be recorded in the office of the town clerk in each of their respective towns.

No. 747.**Order of commissioners of highways discontinuing highway not opened and worked within six years.**

(Laws of N. Y. of 1890, chap. 568, § 99.)

As in form No. 750, to (*), and from thence as follows: (upon the application of A. B.) for the discontinuance of the highway hereinafter described, and it appearing that said highway has not been opened and worked within six years from the time at which it was dedicated to the use of the public (or, laid out) [or, has not been traveled or used as a highway for six years], and the said commissioners having caused a survey of said highway to be made, as follows, to wit (insert survey), it is ordered and determined by the said commissioners, pursuant to law, that said highway has ceased to be a highway, and the same is accordingly hereby discontinued.

In witness, etc. (as in form No. 720).¹

(Signatures of commissioners.)

(Commissioners.)

1. See section 99 of chapter 568 of in the town clerk's office of the town, Laws of New York of 1890, as to and the highway is thereby discontinued this order, which is to be recorded

No. 748.**Order to open highway which has been used by the public as such for twenty years or more.**

(Laws of N. Y. of 1890, chap. 568, § 100.)

As in form No. 750, to (*) and from thence as follows: it having appeared to the said commissioners that the land in said town hereinafter described has been used by the public as a highway, leading from — to —, for the period of (more than) twenty years, but has not been recorded, it is hereby ordered by the said commissioners that the overseers of highways of said town open such land as a highway,

which highway, according to a survey which they have caused to be made thereof, is hereby described as follows, to wit: Beginning, etc. (insert survey), and that the line of said survey be the center of said highway, and that said highway be of the width of (two) rods.

In witness, etc. (as in form No. 720).¹

(Signatures of commissioners.)

Commissioners.

1. See section 100 of chapter 568 of Laws of New York of 1890. Such highways used by the public for twenty years or more are to be opened to the width of at least two rods.

No. 749.

Notice to owner or occupant of land taken for a highway, to remove his fences.

(Laws of N. Y. of 1890, chap. 568, § 101.)

To A. B., etc. (naming owner or occupant):

You will please take notice that we, the undersigned, the commissioners of highways of the town of —, in the county of —, having, by an order duly made, dated —, 1—, and filed and recorded in the town clerk's office of said town on the — day of —, 1—, laid out a highway through inclosed (or, improved, or, cultivated) lands in said town, owned (or, occupied) by you, do hereby, pursuant to statute, require you to remove your fences from within the bounds of said highway within thirty days after the service of this notice upon you.¹

Dated —, 1—.

(Signatures of commissioners.)

Commissioners.

1. See section 101 of chapter 568 of Laws of New York of 1890, as to this notice; if the owner shall not remove his fences within the thirty days, the commissioners shall cause them to be removed, and shall direct the highway to be opened and worked.

No. 750.

Order of commissioners of highways directing fences to be removed from highway, and highway to be opened and worked.

(Laws of N. Y. of 1890, chap. 568, § 101.)

At a meeting of the commissioners of highways of the town of —, in the county of —, held at —, in said town, on the — day of —, 1—, (*) it is hereby ordered that the fences of A. B., etc., upon land owned or occupied by them, through which the highway leading from — to — has been laid out by said commissioners, which said fences have not been removed by said owners or occupants, although notice to remove the same has been given to them according to law, more than sixty days since, be removed, and that the said highway be opened and worked.¹

(Signatures of commissioners.

Commissioners.

1. See section 101 of chapter 568 of Laws of New York of 1890, as to this order.

No. 751.

Notice to occupant of land to remove fallen trees from highway.

(Laws of N. Y. of 1890, chap. 568, § 103.)

To A. B., owner (or, occupant) of land situated in the town of —, in the county of —:

You are hereby notified pursuant to statute to remove from the highway leading from — to —, the tree which has fallen into the said highway from your inclosed land, such removal to be made within two days from the time of the service of this notice upon you; and that if such tree shall not be removed within that time, but shall continue in the highway you will forfeit the sum of fifty cents for every day thereafter, until the said tree shall be removed.¹

Dated —, 1—.

M. N.

1. See section 103 of chapter 568 of Laws of New York of 1890, as to this notice and its effect.

No. 752.

Notice by commissioners of highways to occupant or owner to remove encroachment upon or obstruction to highway.

(Laws of N. Y. of 1890, chap. 568, § 105.)

To A. B., owner (or, occupant) of lands situated in the town of —, in the county of —:

You are hereby notified pursuant to statute, that the highway in said town, leading from [the house of C. D. in said town to the house of E. F. in said town] is encroached upon to the extent of a strip of land — feet in length and — feet in breadth on the (easterly) side thereof along the lands owned by you (or, in your occupation) by a (stone fence) which forms part of the inclosure of said land [or, is obstructed by (state obstruction, *e. g.*) a gate erected by you across the same at a point in said highway opposite to your lands (or, otherwise name the place of obstruction) the extent of which obstruction is the width of said gate, viz: — feet] and that you are directed and required, according to the statute in such case made and provided, to remove the said fence (or, gate, etc.) within (sixty)¹ days after service of this notice upon you.²

Dated —, 1 —.

Yours, etc.

(Signatures of commissioners.)

Commissioners.

1. Not more than sixty days.

2. See section 105 of chapter 568 of Laws of New York of 1890, as to this notice. By that section if such owner or occupant shall neglect or refuse to remove such obstruction or encroachment within the time specified in such notice, he shall forfeit to the town the sum of twenty-five dollars; and the commissioners may remove such obstructions or en-

croachments at the expense of the town, which may be recovered by action, of such owner or occupant; or the commissioners may bring an action in any court of competent jurisdiction, to compel such owner or occupant to remove such obstructions or encroachment; such actions by commissioners of highways are to be brought in the name of the town.

See *Town of Sardinia v. Butler* (149 N. Y. 505, rev'g S. C., 78 Hun. 527); *Flood v. Van Wormer* (147 N. Y. 284).

ARTICLE 2.

FORMS RELATING TO LAYING OUT PRIVATE ROADS.

(Laws of N. Y. of 1890, chap. 568, art. 4.)

- No. 753. Application to lay out private road
754. Notice of application to lay out private road, and of time and place for selection of a jury.
755. Affidavit of service of notice on owners and occupants of lands.
756. List of jurors to be presented by commissioners in opening private road.
757. Summons for jury to determine necessity for private road, etc.
758. Oath to be administered to jurors to determine necessity for private road, etc.
759. Verdict of jury appointed to determine such necessity.
760. Certificate of commissioners of highways that private road has been laid out.
761. Application to County Court by owner or occupant, for order confirming, etc., decision of jury, form No. 759.
762. Order of County Court, confirming, etc., such decision.

No. 753.

Application to lay out private road

(Laws of N. Y. of 1890, chap. 568, § 106.)

I, the undersigned, a person (or, The A. B. Company, a corporation) assessable in the town of —, in the county of —, hereby make (or, makes) application, pursuant to statute, to the commissioners of highways of said town, to lay out a private road for my (or, its) use, commencing, etc. (describe same, giving location, width, courses and distances, as in form No. 719), and passing through the lands of C. D., of said town.¹

Dated —, 1—,

A. B. (or, The A. B. Company,
by A. F., its President.)

1. See section 106 of chapter 568 of Laws of New York of 1890, as to the commissioners of highways of the town in which it is to be located. this application, which is to be made

No. 754.**Notice of application to lay out private road, and of time and place for selection of a jury.**

(Laws of N. Y. of 1890, chap. 568, § 108.)

An application having been made to the undersigned, commissioners of highways of the town of —, in the county of —, for the laying out of a private road in said town, a copy of which application is hereto annexed, and said commissioners (or, commissioner) having appointed a time and place, as hereinafter mentioned, when a jury will be selected for the purpose of determining upon the necessity of such road, and to assess the damages by reason of the opening thereof, you are hereby notified, pursuant to statute, that the said time and place for the selection of such jury will be at (the office of said commissioners), in the said town of —, on the — day of —, 1—, at — o'clock in the — noon.¹

Dated — 1—.

(Signatures of commissioners.

Commissioners.

(Annex copy application, form No. 753.)

1. See section 108 of chapter 568 of Laws of New York of 1890, as to this notice.

No. 755.**Affidavit of service of notice on owners and occupants of lands.**

(Laws of N. Y. of 1890, chap. 568, § 109.)

In the matter of opening a }
 private road in the town of }
 —, in the county of —, }
 upon the application of A. }
 B. }

— COUNTY, ss.:

A. B., of —, being duly sworn, says: That on the — day of —, 1—, at —, he served the annexed notice and

application upon M. N. and P. L., residents of the town of —, in the county of —, to whom such notice is addressed, by delivering to each of them copies thereof (or, by leaving copies thereof at the respective dwelling houses of said M. N. and P. L., in said town of —, they being absent from their said dwelling houses at the time of such service).

(Or, by depositing (two) copies thereof in the post-office at —, in the town of —, properly inclosed in envelopes, one of them addressed to said M. N., at his place of residence in the town of —, in the county of —, and the other addressed to said P. L., at his place of residence in the town of —, in the county of —, and paying the postage thereon).

(Or, by delivering to F. N., the father (or, mother; or, guardian) of said M. N., a copy thereof, said M. N. being an infant.)¹

A. B.

(Jurat, as in form No. 32.)

(Annex copy notice.)

1. See section 109 of chapter 568 of the notice, or the next day thereof of Laws of New York of 1890, as to after, excluding Sundays and holidays. The service is to be made on the same day of his receipt

No. 756.

List of jurors to be presented by commissioners in opening private road.

(Laws of N. Y. of 1890, chap. 568, § 110.)

(Title of proceeding, as in form No. 755.)

The undersigned (one of the) commissioners of highways of the town of —, in the county of —, having received due proof of service of notice of the time and place appointed by the said commissioners for the selection of a jury, in the above entitled matter, upon the owners and occupants of the land through which it is proposed to be laid out, present the following list of eighteen resident freeholders of said town, in no wise of kin to the said applicant, owners or oc-

cupants, or either of them, and not interested in such lands, which list is made pursuant to statute, by the said commissioners (or, commissioner).¹

P. R., etc. (naming jurors).

Dated —, 1—.

(Signatures of commissioners (or, signature of commissioner.)
(Commissioner.)

1. See section 110 of chapter 568 of Laws of New York of 1890, as to this list. By section 111, id., the owners or occupants of the land may strike from the list not more than six names, and the applicant a like number, and of the number which remain, the six names standing first on the list shall be the jury.

No. 757.

Summons for jury to determine necessity for private road, etc.

(Laws of N. Y. of 1890, chap. 568, § 112.)

The People of the State of New York, to any one of the constables of the town of —, in the county of —, greeting:

You are hereby directed to summon P. R., etc., (naming jurors), to meet at —, in said town, on the — day of —, 1—, at —, o'clock in the — noon, to (*) form a jury to determine as to the necessity for laying out a private road through the lands of C. D., etc., on the application of A. B., and to assess the damages by reason of the opening thereof.

Witness our hands this — day of —, 1—.¹

(Signatures of commissioners.)

Commissioners.

1. See section 112 of chapter 568 of Laws of New York of 1890 as to this summons.

No. 758.

Oath to be administered to jurors to determine necessity for private road, etc.

(Laws of N. Y. of 1890, chap. 568, § 113.)

You do solemnly swear, in the presence of the ever living God, that you will well and truly determine as to the neces-

sity of a private road over the lands of C. D., etc., as has been applied for by A. B., and assess the damages by reason of the opening thereof.¹

1. See section 113 of chapter 568 of Laws of New York of 1890, as to this oath

No. 759.

Verdict of jury appointed to determine the necessity for private road, etc.

(Laws of N. Y. of 1890, chap. 568, § 114.)

(Title of proceeding, as in form No. 755.)

We, the undersigned, resident freeholders of said town, and in no wise of kin to A. B., the applicant for the laying out of a private road for the use of said A. B., over the premises mentioned in the application hereto annexed, or to the owners, or occupants of said premises, or either of them, having met at —, in said town, on the — day of —, 1—, and having been duly sworn well and truly to determine as to the necessity of said road, and to assess the damages by reason of the opening thereof, and having viewed the premises and heard the allegations of the parties and their witnesses, do hereby certify that, in our opinion, it is necessary and proper to lay out a private road for the use of the said A. B., pursuant to his said application, and we assess the damages of C. D., by reason of the opening thereof, at the sum of (one hundred) dollars.

In witness whereof, we have hereunto subscribed our names, this — day of —, 1—.¹

P. R., etc.

1. See section 114 of chapter 568 of Laws of New York of 1890, as to this verdict, which is to be delivered in writing to the commissioners. By section 115, if the necessity of such private road has been occasioned by the alteration or discontinuance of a public highway running through the lands belonging to a person through whose lands the private road is proposed to be opened, the jury shall

take into consideration the value of the highway so discontinued, and the benefit resulting to the person by reason of such discontinuance, and shall deduct the same from the damages assessed for the opening and laying out of such private road.

As to adjournments of proceeding, see section 123 of same chapter. As to fees of jurors and of commissioners, see section 118 of same chapter.

No. 760.**Certificate of commissioners of highways that private road has been laid out.**

(Laws of N. Y. of 1890, chap. 568, § 116.)

(Title of proceeding, as in form No. 755.)

The undersigned commissioners of highways of the town of —, in the county of —, do hereby certify pursuant to law as follows: At a meeting of said commissioners held at —, in the said town, on the — day of —, 1—, to-wit: That a private road has been laid out by them for the use of A. B., pursuant to his annexed application and on the annexed verdict of six reputable freeholders of said town convened and duly sworn after due notice to the owners and occupants of the lands through which such road is to pass as required by the statute certifying that such road was necessary; and we further certify that the courses and distances thereof, according to a survey thereof which the said commissioners have caused to be made, are as follows, to wit: (insert survey).

And said commissioners further certify and order that the line above described shall be the center of said road, and that said road shall be of the width of two rods.

In witness whereof, we have hereto subscribed our hands, this — day of —, 1—. ¹

(Signatures of commissioners.)

(Commissioners.)

1. See section 116 of chapter 568 of (forms Nos. 753, 759), and to be filed Laws of New York of 1890, as to and recorded in the town clerk's this certificate, which is to be an- office. nexed to the application and verdict

No. 761.**Application to County Court by owner or occupant for order confirming, vacating or modifying decision of the jury, form No. 759.**

(Laws of N. Y. of 1890, chap. 568, § 119.)

(Title of proceeding, as in form No. 755.)

SIRS:— Take notice that upon the papers and proceedings in the above entitled proceeding, and upon (naming any

papers served) copies of which are hereto annexed and herewith served upon you, an application will be made by C. D. owner (or, occupant) of the lands taken for a private road in the above entitled proceeding¹ at a term of the County Court of — county to be held at — on the — day of —, 1—, at the opening of the court on that day (or, at — o'clock in the — noon) or, as soon thereafter as counsel can be heard for an order confirming (or, vacating ; or, modifying) the decision of the jury in said proceeding, dated —, 1—, and filed in the town clerk's office of the town of —, on the — day of —, 1—, as it shall deem just and legal.²

Yours, etc.,

M. N.,

Attorney for C. D.

(Office address.)

To A. B. etc., (naming adverse parties to the proceeding).

1. The application is to be made to within thirty days after the decision the County Court of the county of the jury has been filed in the town wherein such private road is situated. clerk's office. If no such motion is

2. See section 119 of chapter 568 made, the decision of the jury is to of Laws of New York of 1890, as to be deemed final. See, also, note 1, this notice, which is to be given to form No. 762.

No. 762.

Order of County Court, confirming, etc., the decision of the jury, form No. 759.

At, etc., as in form No. 724.

(Title of proceeding, as in form No. 755.,

On reading and filing the affidavit of A. B., dated — 1—, and (naming other motion papers read) together with notice of motion for an order confirming (or, vacating ; or modifying) the decision of the jury in the above entitled proceeding dated —, 1—, and filed in the town clerk's office on the — day of —, 1—, with proof of due service of, etc., on, etc., and on motion of A. F., counsel for C. D., the owner (or, occupant) of land through which the private road described in said decision is proposed to be opened, and after hearing R. M., of counsel for, etc., and on reading and filing

(name any papers read in opposition to motion) it is hereby ordered, that said decision be and the same is hereby in all respects confirmed (or, that said decision be vacated and that another hearing be had of the matter before another jury, and the said proceeding is hereby remitted to the commissioners of highways of the town of —, in the county of —, for that purpose; or, that said decision be and the same is hereby modified, as follows, to wit: (stating how modified)).

And it is further ordered (state any further relief).¹

1. See section 119 of chapter 568 of Laws of New York of 1890, as to this order. The decision of the County Court is by that section made final, except that a new hearing may be had as therein provided. If the final decision shall be adverse to the applicant, no other application for the same road shall be made within two years.

is provided that if upon a new hearing, the damages assessed are increased, the applicant shall pay the costs and expenses thereof, otherwise the owner shall pay the same.

See, also, section 121, id., as to the purpose for which the private road may be used, and also as to its use by the owner or occupant of the land through which it is laid out.

By section 120 of same chapter it

TITLE V.

FORMS RELATING TO BRIDGES.

(Laws of N. Y. of 1890, chap. 568, art. 5.)

- No. 763. Statement to be made by commissioners of highways to supervisor of town, as to expenses of free bridges in towns.
- 764. Notice by commissioners of highways of town, liable with other town to repair, etc., bridge.
- 765. Petition to commissioners of highways by freeholders for building, etc., of bridge over streams dividing towns.
- 766. Affidavit of freeholders on application to court for order requiring building, etc., of bridge.
- 767. Notice of motion to commissioners of highways on application for order requiring them to build, etc., bridge over stream dividing towns.
- 768. Order of court granting motion and ordering reference.
- 769. Notice by referee appointed by order, form No. 763, of hearing before him.
- 770. Report by referee, appointed by order, form No. 763.

- No. 771. Order of court upon the coming in of referee's report.
 772. Report to be added to annual report of commissioners of highways to town board in case of proceeding to build. etc., bridge across stream dividing two towns.
 773. Affidavit on application for reimbursement of moneys expended in repairing, etc., unsafe bridge.
 774. Notice of application for such reimbursement.
 775. Order of court upon application for reimbursement by person repairing, etc., bridge.
 776. Notice of penalty prescribed by commissioners of highways, for riding or driving faster than a walk on bridge.

No. 763.

Statement to be made by commissioners of highways to supervisor of town as to expenses of free bridges in towns.

(Laws of N. Y. of 1890, chap. 568, § 132.)

We, the undersigned, commissioners of highways of the town of —, in the county of —, do hereby make the following statement, as required by law, of the expenses incurred by the said town, during the year preceding the date hereof, for the construction (and repair) (or, for the repair) of the free bridge located at —, in said town, and crossing the (name of stream), and known as the — bridge, to wit:

(Here state items of expense incurred for such repairs, etc.)

Dated —, 1—.

(Signatures of commissioners.)

Commissioners.

COUNTY OF —, ss.:

A. R., of —, being duly sworn, says: That he is one of the commissioners of highways of the town of —, in the county of —, whose names are subscribed to the foregoing statement; that the said statement is true to the best of deponent's knowledge, information and belief.

A. R.

(Jurat, as in form No. 32.)

1. See section 132 of chapter 568 of Laws of New York of 1890, as to this statement, which is to be verified by one of the commissioners and delivered to the supervisor of the town on or before the first day of November in each year. See, also, section 133 of same chapter as to the presentment thereof by the supervisor to the board at its next annual session thereafter, and the levy of tax by the board.

No. 764.

Notice by commissioners of highways of town liable with other town to repair, etc., bridge.

(Laws of N. Y. of 1890, chap. 568, § 135.)

To the commissioners of highways of the town of —, in the county of — :

You are hereby notified, pursuant to law, that you are required within twenty days to give your consent in writing to the building (or, repairing) of the bridge, situated, etc. (describing same, as in form No. 763), which bridge the towns of — and — are liable to make (or, maintain) at their joint expense, and that in case of your neglect so to consent, and within a reasonable time thereafter to build (or, repair) said bridge, the undersigned commissioners will build (or, repair) said bridge.¹

Dated —, 1 —.

Yours, etc.,

(Signatures of commissioners.)

Commissioners of Highways of the Town of —

¹ See section 135 of chapter 568 of Laws of New York of 1890, as to this notice and its effect.

No. 765.

Petition to commissioners of highways by freeholders for building, etc., of bridge over stream dividing towns.

(Laws of N. Y. of 1890, chap. 568, § 136.)

To A. M., etc., commissioners (or, commissioner) of highways of the town of —, in the county of —, and C. P., etc., commissioners (or, commissioner) of highways of the town of —, in the county of — :

We, the undersigned, freeholders of the town of —, in the county of —, hereby respectfully petition you to build (or, repair or rebuild, as shall be deemed necessary) the highway bridge uniting said towns (and known as the said

— bridge). [This petition is based upon the fact that the said bridge is out of repair and dangerous to public travel.]¹

Dated —, 1—. ²

F. P. E.,

I. L.,

J. M.,

Freeholders of the town of F.

1. Insert these words in brackets in case the petition is for rebuilding or repairing the bridge. 2. See section 136 of chapter 568 of Laws of New York of 1890, as to the petition.

No. 766.

Affidavit of freeholders on application to court for order requiring building, etc., of bridge.

(Laws of N. Y. of 1890, chap. 568, § 136.

SUPREME COURT, — COUNTY.

In the matter of the application of certain freeholders of the town of —, in the county of —, for an order requiring the commissioners of highways of the towns of — and —, to build (or, rebuild; or, repair) the bridge uniting said towns (and known as the — bridge). }

COUNTY OF — ss.:

F. P. E., I. L. and J. M., being each duly sworn, depose and say, that they are freeholders of the town of —, in the county of —; that for a number of years the towns of — and —, in said county, have been connected together by a public highway; that that portion of said highway running over the head of H. creek, consists of a bridge known as the — bridge; that said bridge connects the said towns together and a public highway runs from said bridge — wardly through the town of —, and — wardly therefrom through the town of —; that at all the times hereinafter

stated, A. M., etc. (were), and now (are), the commissioner(s) of highways in and for the said town of —, and C. P., etc. (were), and now (are) the commissioner(s) of highways of the said town of —.

That on the — day of —, 1—, the said bridge being out of repair and unsafe for public travel, and being condemned, these deponents united in a petition to said commissioners of highways, a copy of which petition is hereto annexed.

That the same was, on the — day of —, 1—, duly and personally served on all of the said commissioners.

That the said commissioners have not yet built (or, repaired, etc.), the said bridge, but neglect and refuse to build (or, repair; or, rebuild) the same.

(That said bridge is out of repair, and is unsafe and dangerous, and ought to be repaired or rebuilt at once.)

These deponents further allege, that the said two towns are liable to make (or, maintain) said bridge; that said bridge crosses the stream or creek known as the — creek, which stream or channel divides the said towns.

[These deponents further say that they have been informed by the commissioner(s) of highways of the town of —, and believe, that the commissioner(s) of highways of the town of — refuses (or, refuse) to unite with the commissioners of the said town of —, to make any repairs to (or, to build) said bridge, though the commissioners of the town of — are ready and willing to unite and proceed to build said bridge (or, to make the necessary repairs thereto).]

These deponents further say, that the public interest will be greatly injured by further delay in building (or, in making the necessary repairs upon) said bridge.¹

(Signatures of affiants.)

(Jurat, as in form No. 32.)

(Annex copy petition, form No. 765.)

1. See section 136 of chapter 568 of Laws of New York of 1890, as to this affidavit and application thereupon, and see the following cases decided under former statutes, viz.:

Matter of *Petition of Freeholders of Cattaraugus Co.* (59 N. Y. 316, rev'g S. C., 8 N. Y. Supr. Ct. Rep. (T. & C.) 235); *Beckwith v. Whalen* (65 N. Y. 322); *Matter of Freeholders of*

Irondequoit (68 id. 376); Tift v. Alley (3 N. Y. Supr. Ct. Rep. (T. & C.) 784); Phelps v. Hawley (3 Lans. 160; S. C., aff'd, 52 N. Y. 23); Matter of Freeholders of Mt. Morris and Castile (41 Hun, 29; S. C., 24 Week. Dig. 313); *In re Spier* (115 N. Y. 665, aff'g S. C., 20 State Rep. 289; 3 N. Y. Supp. 438); *In re Commissioners, etc., of Glen and Florida* (3 N. Y. Supp. 461; S. C., 20 State Rep. 394); Matter of Freeholders of Owasco (46

Hun, 620); Getty v. Town of Hamlin (id. 1); Day v. Day (94 N. Y. 153).

The application is now to be made to the Supreme Court, at a Special Term to be held in the judicial district in which such bridge or any part thereof is situated.

See, also, note 1 to form No. 771, as to application by commissioners of highways of a town instead of by freeholders.

No. 767.

Notice of motion to commissioners of highways on application for order requiring them to build, etc., bridge over stream dividing towns.

(Laws of N. Y. of 1890, chap. 568, § 136.)

(Title of proceeding, as in form No. 766.)

SIRS:—You will please take notice, that upon the affidavits and papers, copies of which are herewith served upon you (and upon such other papers as may be hereafter duly served herein) a motion will be made at a Special Term of the Supreme Court, to be held at, etc., on, etc., at the opening of the court on that day or as soon thereafter as counsel can be heard, for a rule or order requiring you to build (or, to rebuild; or, repair) the highway bridge (known as the — bridge) uniting the towns of — and —, pursuant to the statute in such cases made and provided, and for such other rule or order as may be proper.¹

Dated — 1—.

Yours, etc.

(Signatures of petitioners.)

(or, J. M., Attorney for Petitioner.)

(Office address.)

To M. N., etc., Commissioner of Highways of the town of —, and P. F., etc., Commissioner of Highways of the town of —.

1. See section 136 of chapter 568 of Laws of New York of 1890, as to this notice and the proceeding generally; and see note to last form.

No. 768.**Order of court granting motion and ordering reference.**

(Laws of N. Y. of 1890, chap. 568, § 136.)

At, etc., as in form No. 766.

(Title of proceeding, as in form No. 329.)

A motion having been duly made in the above entitled matter, for an order requiring the commissioners of highways of the said two towns to build (or, repair; or, rebuild), the — bridge, so called, and which unites the said towns:

Now, on filing the affidavit of F. D., etc., dated —, 1—, and the petition to the commissioners of highways of the towns of — and —, annexed to and referred to in said affidavit, and due proof of service on the said commissioners of highways of copies thereof and notice of this motion, and after hearing I. F. for said motion, and M. H. of counsel for the town of —, opposed:

Ordered, that the commissioners of highways of the said two towns, forthwith proceed to build (rebuild; or, repair) the said bridge in a good and substantial manner, so that the same shall be safe and fit for public use; that it be referred to M. D., of —, to take and report the facts and circumstances connected with said bridge to this court, with a view to determine what proportion of the expense each town shall bear, and also to determine the length and limits of said bridge as contemplated by statute, and that in the meantime neither town shall be prejudiced by the joint action of the commissioners herein imposed.¹

1. See section 136 of chapter 568 of Laws of New York of 1890, as to this order and the proceeding generally; and see note to form No. 766. The above order is substantially from the Matter of the Freeholders of Irondequoit (61 N. Y. 377).

No. 769.**Notice by referee appointed by order, form No. 768, of hearing before him.**

(Laws of N. Y. of 1890, chap. 568, § 136.)

(Title of proceeding, as in form No. 766.)

SIRS:—I, M. D., the referee, appointed by order of the Supreme Court, made at a Special Term thereof, held at

the (city) of —, on the — day of —, 1—, to take and report the facts and circumstances connected with the said bridge to said court, do hereby appoint the — day of —, 1—, at my office, No. — street, in the (city) of —, at — o'clock in the — noon, for the taking of the evidence and the hearing of the matters so referred to me, at which time and place all parties concerned are to attend.¹

Dated —, 1—.

M. D.,
Referee.

To (naming freeholders), Freeholders of the town of —, and P. R., etc., Commissioner(s) of Highways of the town of —, and G. C., etc., Commissioner(s) of Highways of the town of —.

1. See section 136 of chapter 568 as to this proceeding; also, note 1 to of the Laws of New York of 1890, form No. 766.

No. 770.

Report of referee, appointed by order, form No. 768.

(Laws of N. Y. of 1890, chap. 568, § 136.)

(Title of proceeding, as in form No. 766.)

For the petitioners, M. N.

For the contestant, E. Y.

Referee sworn.

Tried at —, 1—, before M. D., referee (here insert minutes of testimony).

The testimony here closed.

In pursuance of the annexed order, I have been attended by the parties and their counsel, and I do hereby certify that the foregoing is all the evidence presented in this case.¹

Dated —, 1—.

M. D.,
Referee.

1. See section 136 of chapter 568 generally. Also, see note 1 to form of the Laws of New York of 1890, No. 766.
as to this report and the proceeding

No. 771.

Order of court upon the coming in of referee's report.

(Laws of N. Y. of 1890, chap. 568, § 136.)

At, etc., as in form No. 329.

(Title of proceeding, as in form No. 766.)

On reading and filing the report of the referee in the above entitled matter, dated —, 1—, it is hereby ordered that all the road-way or bridge commonly called the — bridge, between the towns of —, and — constructed across the — creek, is to be held as a bridge between said towns under the statute (Laws of 1890, chap. 568, art. 5), to be supported and maintained at the joint and equal expense of said towns, and that said towns shall pay an equal amount respectively of the expense of repairs of such bridge, under the order heretofore made in this matter of the date of —, 1—. ¹

It is hereby further ordered and directed that the sum of such expense, to wit, the sum of — dollars (and of all work done thereon by either town this year), be borne and paid by the said towns in equal amounts respectively (insert any provisions in regard to costs). ²

1. See form No. 768, for the order towns, to join in the building, rebuilding or repair of any such bridge, referred to. in like manner as freeholders are thereby authorized.

2. See section 136 of chapter 568 of Laws of New York of 1890, as to this order, and see note to form No 766. A copy of above order is to be served upon the commissioners of highways of the adjoining towns respectively. (Id., § 138.)
The above was substantially the final order in Matter of the Freeholders of Irondequoit (68 N. Y. 377). As to allowances of costs, etc., see section 141 of same chapter. As to appeal from above order to General Term of Supreme Court, see section 140 of said chapter 568. By section 141, id., the appeal is to conform to the practice of the Supreme Court, in case of appeal from an order of a Special Term to the General Term

By section 137 of same chapter the commissioners of highways of any such town, may institute and prosecute proceedings under that chapter, in the name of the town, to compel the commissioners of such adjoining

No. 772.

Report to be added to annual report of commissioners of highways to town board in case of proceeding to build, etc., bridge across stream dividing two towns.

(Laws of N. Y. of 1890, chap. 568, § 139.)

As in form No. 690, to end thereof, and from thence as follows: And we do further report, that the commissioners of highways of the town of —, in the (said) county of —, having refused, upon our application, to join in building (re-building or repairing) the bridge at, etc., across the — creek, dividing the town of — from the town of —, an application was made by us (or, by A. B., etc., freeholders of the town of —) to the Supreme Court, at a Special Term thereof, held at, etc., for an order requiring the said commissioners of highways of said town of — to join in the building, etc., of said bridge, and that an order was made by said court in said proceeding, a copy of which is annexed to this report, marked Schedule A (state other or further facts, as may be necessary).¹

All of which is respectfully submitted.

Dated — 1 —

(Signatures of commissioners.)

Commissioners of Highways.

1. See section 139 of chapter 568 of Laws of New York of 1890, as to his report.

No. 773.

Affidavit on application for reimbursement of moneys expended in repairing, etc., unsafe bridge.

(Laws of N. Y. of 1890, chap. 568, § 142.)

— COUNTY, ss.:

A. B., of —, being sworn, says: That heretofore, and before the — day of —, 1 —, the bridge at —, across the — creek, in the town of — (or, which creek divides the towns of — and —), in the county of — [or, divides the town of —, in the county of —, from the town of —, in the county of —] was out of repair so as to

render it unsafe for travellers to pass over the same [or, had fallen down; or, had been swept away by a freshet (or, state how otherwise injured)].

That on the — day of —, 1—, notice was given to the commissioners of highways in the said town (or, towns) of — (and —) by (this deponent), of the condition of said bridge, but that said commissioners neglected (and refused) to repair or rebuild the said bridge up to the — day of —, 1—.

That on the day last aforesaid (and on several days thereafter), this deponent repaired (or, rebuilt) such bridge at his own expense, and expended, in so repairing (or, rebuilding) the same the sum of — dollars (as will more fully and in detail appear by the exhibits hereto annexed, containing the items thereof and receipts therefor), which amount was necessarily and reasonably expended by him in repairing (or, rebuilding) the said bridge.

That the just proportions in which the said amount should be paid by said towns, according to the best of your petitioner's knowledge, information and belief, is as follows: (stating same), for the following reasons, to wit: (stating reasons).

Wherefore, this deponent claims that he is entitled to an order, pursuant to statute, directing the said towns of — and — severally to reimburse him such expenditures (together with interest thereupon from the date thereof), and makes application for such order.¹

(Jurat, as in form No. 32.)

A. B.

1. See section 142 of chapter 568 of this affidavit and the application generally. the Laws of New York of 1890, as to

No. 774.

Notice of application for reimbursement of amount expended in repairing bridge.

(Laws of N. Y. of 1890, chap. 568, § 142.)

(Title of proceeding, as in form No. 775.)

SIRS: — Please take notice that upon the (affidavit, etc.), with a copy (or, copies) of which you are herewith served.

an application will be made to the Supreme Court, at a Special Term thereof, to be held at, etc., on, etc., at — o'clock in the — noon (or, at the opening of the court on that day), or as soon thereafter as counsel can be heard (*), for an order requiring the towns of — and —, in the county of —, severally to reimburse to A. B. the amount of the expenditures made by him, mentioned in said affidavit, and requiring each of said towns to pay its just proportion of such expenditure, and for (costs of said application), and for such other or further relief as may be proper.¹

Yours, etc.,

F. S. (Attorney for) A. B.

Office address, etc.

To A. M., etc., Commissioners of Highways of, etc.

1. See section 112 of chapter 568 of eight days before the motion upon Laws of New York of 1890, as to this the commissioners of highways of notice, which is to be served at least each of the towns.

No. 775.

Order of court upon application for reimbursement by person repairing, etc., bridge.

(Laws of N. Y. of 1890, chap. 568, § 142.)

At, etc., as in form No. 329.

In the matter of the application by A. B. for an order requiring the towns of — and — to reimburse to him the amount expended in repairing the bridge across the — creek dividing said towns.

On reading and filing the affidavit of A. B., dated —, 1—, with proof of due service of a copy thereof, together with notice of this application upon the commissioners of highways of each of said towns, and on motion of E. A.,

counsel for said A. B., after hearing P. M., counsel for —, and on filing (name opposing affidavits):

It is hereby ordered that the said towns of — and —, in the county of —, severally reimburse to said A. B. the amount of — dollars, expended by him in repairing the bridge at —, over the stream called the — creek, dividing the said two towns (with interest thereupon from the — day of —, 1—),¹ each of said towns paying its just proportion of such expenditure; that is to say, said town of — paying the amount of — dollars, being the — part thereof, and the said town of — paying the sum of — dollars, being the — part thereof (and that the costs of this action, to wit, the sum of (ten) dollars, be paid by said towns to said A. B., in equal shares).²

1. The statute, section 142 of chapter 568 of Laws of New York of 1890, does not, however, provide for interest upon the amount expended.

2. See section 142, referred to in

note 1 to this form as to this order. By section 152 of same chapter, costs of this motion may be allowed in the discretion of the court, not exceeding ten dollars.

No. 776.

Notice of penalty prescribed by commissioners of highways for riding or driving faster than a walk on bridge.

(Laws of N. Y. of 1890, chap. 568, § 142.)

NOTICE.

— dollars penalty for riding or driving on this bridge faster than a walk.¹

1. See section 143 of chapter 568 of Laws of New York of 1890, as to this notice, which applies to bridges, the chord of which is not less than twenty-five feet. The amount of the penalty is to be not less than one nor

more than five dollars, to be fixed by the commissioners of highways and put up in a conspicuous place at each end of the bridge in large characters. See, also, section 143, id., as to penalty for driving over such bridge.

TITLE VI.

FORMS RELATING TO FERRIES.

(Laws of N. Y. of 1890, chap. 568, art. 7.)

No. 777. Application for a license to keep a ferry.

778. Notice to owners of lands of application for a license to keep a ferry.

779. Affidavit of service of notice, form No. 778.

780. Undertaking given in proceeding to obtain license to establish and keep a ferry.

781. License to establish and keep a ferry.

782. Clerk's certificate to be indorsed upon or annexed to a copy of license for licensee.

No. 777.**Application for a license to keep a ferry.**

(Laws of N. Y. of 1890, chap. 568, § 170.)

To the County Court of the county of — (or, the City Court of the city of —, in the county of —):¹

The petition of O. M. respectfully shows, that he resides in the town of —, in the said county of —, and is (or, that C. D. is) the owner of the land situated in the said (town) [or, in the town (or, city) of —, in the county of —], on the bank of the (naming stream), through which the part of the public highway in said (town) leading from the (village) of —, in said (town), to the said (naming stream), adjoining the proposed ferry hereinafter mentioned runs; and that a ferry ought to be established for the convenience and accommodation of the public, across the said (name of stream) at the place aforesaid.

[That the said C. D., the owner of the land through which the said part of said highway runs, as aforesaid, is not a suitable person to establish said ferry, for the following reasons (state same) [or, has neglected to apply for a license to keep such ferry, notwithstanding that due service of the notice required by law has been made upon him, as will appear from a copy of said notice, and the affidavit of service thereof

which is hereto annexed; or, has heretofore obtained a license to keep said ferry, but has neglected to comply with the conditions of the said license (or, to keep said ferry)].²

[That due service of notice of the time and place of this application has been made upon said C. D., as will appear from a copy of said notice and the affidavit of service thereof, which is hereto annexed.]³

Wherefore your petitioner prays that this court will grant him a license to establish and keep said ferry, upon his complying with the provisions of the statutes in such case made and provided.⁴

Dated —, 1—.

A. B.

(Verification by petitioner, as in form No. 323.)

(Annex notice and proof of service, forms Nos. 778 and 779.)

1. The County Court in each of the counties of the State, or the City Court of a city, is authorized, by section 170 of chapter 568 of Laws of 1890, to grant licenses for keeping

ferries in their respective counties or cities, to such persons as the court may deem proper, for a term not exceeding five years.

2. Insert these words in brackets in case the application is made by a person other than the owner of the property. No license shall be granted to a person, other than the owner of the land through which that part of the highway adjoining to the ferry shall run, unless the owner shall not be a suitable person or shall neglect to apply after being served with eight days written notice from such other person of the time and place at which he will apply for such license, or having obtained such

license, shall neglect to comply with the conditions of the license, or maintain the ferry. (Laws of N. Y. of 1890, chap. 568, § 170.)

3. Insert these words in case the application is made by another person than the owner, and the application is made upon other grounds than that the owner has not applied within the time prescribed. Such notice should be given, it seems, although the statute does not in terms require it.

4. See section 170 of chapter 568 of Laws of N. Y. of 1890 (p. 1207, Sess. Laws) generally, as to this proceeding; see, also, *People v. Babcock* (11 Wend. 586); *Matter of Talcott* (31 Hun, 464); *Wiswall v. Wandell* (3 Barb. Ch. 312); *Mayor, etc., of New York v. Starin* (106 N. Y. 1); *Same v. New Jersey S. N. Co.* (id. 28).

No. 778.**Notice to owner of lands of application for a license to keep a ferry.**

(Laws of N. Y. of 1890, chap. 568, § 170)

To. C. D.;

Take notice, that an application will be made to the County Court of the county of — (or, to the City Court of the city of —, in the county of —), at a term thereof to be held at the (court house) in the (city) of —, on the — day of —, 1—, at the opening of the court (or, at — o'clock, — M., on that day), or as soon thereafter as a hearing can be had, for a license to establish and keep a ferry across the (naming stream) from the termination of the public highway in said (town), running through your lands to (give particular description of location of the ferry).¹

Dated —, 1 —.

Yours, etc.,

A. M.

1. As to form and service of this notice, see note 2 to form No. 777, and see for affidavit of service, form No. 779.

No. 779.**Affidavit of service of notice, form No. 778.**

(Laws of N. Y. of 1890, chap. 568, § 170.)

COUNTY OF —, ss.:

F. G., of —, being duly sworn, says that on the — day of —, in the year 1—, at the (town) of — in (said county), he personally served the notice hereto annexed on C. D., to whom the said notice is directed, by delivering to and leaving with the said C. D. a true copy thereof.¹

(Jurat, as in form No. 32.)

F. G.

1. See note 2 to form No. 777, as to service of the notice.

No. 780.**Undertaking given in proceeding to obtain license to establish and keep a ferry.**

(Laws of N. Y. of 1890, chap. 568, § 171.)

Whereas, the undersigned, A. M. (or, C. D.), of —, has made (or, is about to make) application to the County Court

of the county of — (or, to the City Court of the city of —) for leave to establish and keep a ferry across the (naming stream), from the termination of the highway running through the lands of (said) C. D. to (giving particulars of location of the ferry):

Now, therefore, we, said A. M. (or, C. D.) and E. F., of — (and G. H., of —),¹ do hereby jointly and severally undertake, in the sum of — dollars, to and with the People of the State of New York,² pursuant to statute, that said A. M. (or, C. D.) will attend such ferry with sufficient and safe boats and other implements, and so many men to work the same, as shall be necessary during the several hours in each day and at such rates as the court shall direct.

Dated —, 1—.

A. M. (or, C. D.)

E. F.

In presence of
I. J.

(G. H.)

(Acknowledgment, justification and approval by the court, as in form No. 302.)

1. As to this undertaking, see section 170 of chapter 568 of Laws of New York of 1890. It is to be executed and filed with the clerk of the court before the granting of the

license to establish and keep the ferry, by the applicant, with one or more sureties.

2. The statute does not direct to whom the undertaking is to be given.

No. 781.

License to establish and keep a ferry.

Laws of N. Y. of 1890, chap. 568, § 170.)

At a term of the County Court of — county, held at the (city) of —, in said county, on the — day of —, 1—.

Present — Hon. J. C., County Judge.

An application having been made by A. M. (or, C. D.), of the (town) of —, for a license to keep a ferry across the (name of stream) at said town of — (and due notice of the

time and place of said application having been given pursuant to statute, to C. D., the owner of the land through which that part of the highway leading from — to —, adjoining said ferry, runs),¹ and an undertaking having been duly executed by said A. M. (or, C. D.) as required by law, it is hereby ordered and determined that this license be granted to said A. M. (or, C. D.), to keep a ferry at the said (town) of — (describing the location particularly), for the term of (five)² years from the date of this order, and the said A. M. (or, C. D.) is allowed to collect and receive ferriage for the transportation of travelers, property and effects, over and across said ferry, at and after the following rates, and for no greater sum or sums for such transportation, viz. (stating rates).³

1. Insert this clause when the license is granted to an applicant other than the owner of the land.

2. The license is to be for a term not exceeding five years. (Laws of 1890, chap. 568, § 170.)

3. Every license shall be entered in the book of minutes of the court by the clerk; and a certified copy thereof shall be delivered to the person licensed. When the waters over which any ferry may be used shall divide two counties or cities, or a county and city, a license obtained in either

of the counties or cities shall be sufficient to authorize transportation of persons, goods, wares and merchandise, to and from either side of such waters. (Chap. 568, Laws of 1890, § 170.)

See, also, as to posting schedule of the rates of ferriage charged on the ferry, and authorized by law to be charged for ferriage over such ferry, and penalty for non-compliance with this direction, section 174 of same chapter.

No. 782.

Clerk's certificate to be indorsed upon or annexed to a copy of license for licensee.

(Laws of N. Y. of 1890, chap. 568, § 170.)

STATE OF NEW YORK, }
 — county, } ss.:

I, —, clerk of the — court, do hereby certify, that I have compared the annexed (or, within) copy of a license with the original license, this day entered by me in the book

of minutes of said court, and that the same is a correct copy thereof and of the whole of said original.

In witness whereof, I have hereunto affixed my name, and the seal of said court, this — day of —, 1—.¹

[L. S.]

F. H.,

Clerk.

1. Section 170 of chapter 568 of Laws of New York of 1890 provides that a certified copy of the license shall be delivered to the person licensed.

Insurance.

See Abandonment; Proofs of Loss.

Intoxicating Liquors.

See Excise.

CHAPTER XXV.

Forms of Leases.

TITLE I.

GENERAL FORMS.

- No. 783. Lease of a house, etc.
 784. Another short form of lease of house, etc.
 785. Short form of lease to be executed by both parties.
 786. A building lease.
 787. A contract for erection of building.
 788. Lease for years of farm lands.
 789. A lease in perpetuity.
 790. A lease for lives.
 791. Deed of surrender to the reversioner.
 792. Surrender of lease by lessee to lessor, to be indorsed on the lease.
 793. Lease of offices in building containing elevator, steam heating, etc.
 794. Agreement for lease, see forms Nos. 171, 172.
 795. Lease containing chattel mortgage clause.

No. 783.**Lease of a house, etc.**

This indenture, made this — day of —, in the year 1—, between A. B., of, etc., of the one part, and C. D., of, etc., of the other part, witnesseth: That the said A. B., for and in consideration of the rent, covenants and agreements, hereinafter in and by these presents mentioned, reserved and contained on the part and behalf of the said C. D., (his) executors, administrators and assigns, to be paid, observed, done and performed, hath granted, demised and leased, and by these presents doth grant, demise and lease unto the said C. D., his executors, administrators and assigns, all that certain (house, messuage or tenement) with all and singular, its appurtenances, situate, and being on the (north) side of B.

street, in the (city) of —, in the county of —, and State of —, known as number — B street, bounded and described as follows, to wit: (describing premises): To have and to hold the said (house, messuage or tenement), and all and singular other the premises hereinbefore granted or demised, or mentioned, or intended so to be, with the appurtenances, unto (*) the said C. D., (his) executors, administrators and assigns, from the — day of —, next ensuing the day of the date of these presents, for and during, and until the full end and term of (— years) from thence next ensuing, and fully to be complete and ended; yielding and paying therefor yearly, and every year, during the said term, unto the said A. B., his heirs or assigns, the yearly rent of — dollars, payable in equal (quarter yearly) payments on the — days of — in every year; the first payment to begin and to be made on the — day of — next ensuing the date of these presents: Provided, always, nevertheless, and it is the true intent and meaning of these presents, and of the said parties hereto, that if it shall happen that the said yearly rent of — dollars hereby reserved, or any part thereof, be behind and unpaid (by the space of — next over, or) after any of the said days, whereon the same ought to be paid as aforesaid, that then and from thenceforth, it shall and may be lawful to and for the said A. B. (his) heirs, executors, administrators and assigns, into and upon the said demised premises, and every or any part or parcel thereof, with their appurtenances in the name of the whole to re-enter, and the same to have again, repossess and enjoy, as in his or their first or former estate or estates; and (him) the said C. D., (his) executors, administrators and assigns, and all and every other, the occupier or occupiers of the said demised premises, from thence utterly to expel, remove and put out; anything in these presents contained to the contrary thereof in any wise notwithstanding. (†) And the said C. D. doth hereby promise for (himself, his) executors, administrators and assigns, to make punctual payment of the rent, in manner aforesaid, and that he and they shall and will, from time to time, and at all times hereafter, during the said term of (— years) hereinbefore granted, at his and their own

proper costs and charges, well and sufficiently keep in repair the said demised premises, with their and every of their appurtenances, and also the glass, windows, pavements, water-closets, drains, sinks and gutters belonging to the same, in, by and with all manner of needful and necessary reparations and amendments whatsoever, when, and as often as the same shall require (damages by fire only excepted), and the same premises, with all and singular their appurtenances, being in and by all things so well and sufficiently repaired and kept (excepting as before excepted), at the end, expiration or other sooner determination of the said term of (— years) hereby granted, shall and will quietly and peaceably leave and surrender, and yield up unto the said A. B., his heirs, executors, administrators or assigns, in good and sufficient repair and condition, reasonable use and wearing thereof (and damage by fire), as aforesaid, only excepted; and that the said C. D., his executors, administrators and assigns, shall and will, from time to time, and at all times hereafter, during the said term hereby granted, pay and discharge all taxes, charges and impositions, which shall be taxed, charged, imposed or assessed upon the said (messuage or tenement, or premises), or any part thereof.

And that the said C. D., (his) executors or administrators, will not, without the consent of the said A. B., his heirs, executors, administrators or assigns, assign this lease, or the term hereby granted, or sublet the premises hereby granted, or any part thereof, and that (he) or they will not occupy or use the said premises, nor permit the same to be occupied or used, for any business deemed extra-hazardous on account of fire or otherwise, without the like consent, and that (he) and they will permit the said A. B., (his) executors, administrators and assigns, or (his) or their agents, to show the said premises to persons wishing to hire or purchase the same, and on or after the (first day of February) next preceding the expiration of the said term, will permit the usual notice of to let or for sale to be placed upon the walls or doors of said premises, and to remain thereon without hindrance or molestation; and also, that if the said premises, or any part thereof, shall become vacant during the said term, the said

A. B., his heirs, executors, administrators or assigns, or his or their representative, may re-enter the same, either by force or otherwise, without being liable to any prosecution therefor; and relet the said premises as the agent or agents of the said C. D., and receive the rent thereof, applying the same first to the payment of such expenses as he or they may be put to in re-entering, and then to the payment of the rent falling due and payable by these presents, and the balance, if any, to be paid over to the said C. D., (his) executors, administrators or assigns, who shall remain liable for any deficiency.

And the said A. B., for himself, his heirs, executors, administrators and assigns, hereby covenants and agrees with the said C. D. that he will, on or before the expiration of this present lease, at the request and expense of the said C. D., his executors, administrators or assigns, grant and execute to him or them, a new lease of the premises hereby demised, with their appurtenances, for the further term of (— years), to commence from the expiration of the term hereby granted, at the same yearly rent, payable in the like manner and subject to the like covenants, provisoes and agreements (except a covenant for further renewal) as are contained in these presents.¹

(For covenants against the sale of liquors, etc., and against nuisances, see form No. 786.)

And the said A. B., for himself, his heirs and assigns, doth covenant and grant, to and with the said C. D., (his) executors, administrators and assigns, by these presents, that (he) the said C. D., his executors, administrators and assigns, shall or may at all times during the said term hereby granted, by and under the yearly rent, covenants, conditions and agreements herein contained, peaceably and quietly have, hold, occupy and enjoy, all and singular, the said premises hereby demised, and every part and parcel thereof, with the appurtenances, without the let, trouble, hindrance, molestation, interruption or denial of him, the said A. B., his heirs or assigns, or of any person or persons whatsoever lawfully claiming or to claim the same, or any part or parcel thereof.

1. See *Addenda* at foot of index.

In witness whereof, the parties above named have hereunto set their hands (and seals), the day and year first above mentioned.¹

A. B. [L. S.]

In presence of

C. D. [L. S.]

E. F.

(Certificate of proof or acknowledgment, as in forms Nos. 6, etc.)

In consideration of the letting of the premises in the foregoing lease described, and of the sum of one dollar to me duly paid by A. B., the lessor named in said lease, I (or, we) hereby become surety (or, sureties, jointly and severally) for the punctual payment of the rent, and performance of the covenants in the above written agreement mentioned, to be made and performed by C. D., the lessee named in said lease, and if any default shall be made therein, I (or, we) do hereby (jointly and severally) promise and agree to pay unto A. B., the said lessor, such sum or sums of money as will be sufficient to make up such deficiency and fully satisfy the conditions of the said agreement, without requiring any notice of non-payment or proofs of demand being made.

Given under my hand and seal (or, our hands and seals) the — day of —, 1—.

G. H. [L. S.]

(Certificate of proof or acknowledgment by surety, as in forms Nos. 6, etc.)

1. It is provided by section 1 of chapter 345 of the Laws of New York of 1860, that the lessees or occupants of any building which shall, without any fault or neglect on their part, be destroyed, or be so injured by the elements, or any other cause, as to be untenable and unfit for occupancy shall not be liable or bound to pay rent to the lessors or owners thereof, after such destruction or injury, unless otherwise expressly provided by written agreement or covenant, and the lessees or occupants may thereupon quit and surrender pos-

session of the leasehold premises, and of the lands so leased and occupied. (Laws of N. Y. of 1860, p. 592; N. Y. R. S. 7th ed. 2203.)

Defective plumbing work may make a building untenable and unfit for occupancy. (St. Michael's Prot. Episcopal Church v. Behrens, 24 N. Y. Week. Dig. 331; S. C., 10 Civ. Pro. R. (Browne) 181; Vann v. Rouse, 94 N. Y. 401; Butler v. Kidder, 87 id. 98.) See the covenants relating to the provisions of the statute above referred to, contained in the leases in the above cited cases.

The statute of 1860 in effect incorporates into every lease the privilege and exemption therein contained unless "otherwise expressly provided by written agreement or covenant." (*Butler v. Kidder*, *supra*, p. 103.)

It is not essential, however, in order to exclude a lessee from the benefit of that statute that there should be a covenant in express terms, obligating him to pay the rent although the building becomes untenable; it is sufficient if the intention to take away such benefit is clearly shown on the face of the lease or other written agreement, as where it appears that the parties having in mind the contingency mentioned in the statute, inserted provisions or covenants inconsistent with the right of surrender. (*Id.*)

It seems that a lease is not taken out of the statute simply by a general covenant on the part of the lessee to repair. (*Id.*)

See, also, *Schultz v. Corn* (24 N. Y. Week. Dig. 498; S. C., 5 N. Y. State Rep. 19); *Graves v. Berdan* (26 N. Y. 498); *Johnson v. Oppenheim* (55 id. 280); *Suydam v. Jackson* (54 id. 450); *Thomas v. Nelson* (69 id. 118); *Austin v. Field* (7 Abb. Pr. N. S. 29); *Francke v. Youmans* (17 N. Y. Week. Dig. 252); *Sheary v. Adams* (18 Hun, 181); *Bloomer v. Merrill* (1 Daly, 485; S. C., 29 How. Pr. 259); *Coulson v. Whiting* (14 Abb. N. C. 60); *Smith v. Kerr* (108 N. Y. 31); *Tallman v. Murphy* (120 id. 345); *Fleischman v. Topplitz* (46 A. L. Jour. 470, 134 N. Y. 349); *Craig v. Butler* (83 Hun, 286), as to the construction of this statute.

By section 140 of article 4 of title 2 of chapter 1, part 2 of New York Revised Statutes, no covenant is to be implied in any conveyance of real estate, whether such conveyance contains special covenants or not. (1 N. Y. R. S. 738; 7th ed. 2195.)

This provision has been held not

to apply to leases for years. In such cases a covenant for quiet enjoyment is ordinarily implied. But where a lease contains an express covenant for quiet enjoyment, "without molestation or disturbance from the lessor, his successors or assigns," no other or further covenant in respect to enjoyment will be implied. (*Burr v. Stenton*, 43 N. Y. 462.)

By section 1 of title 4 of chapter 1, part 2 of New York Revised Statutes, agreements for the occupation of lands or tenements, in the city of New York, which shall not particularly specify the duration of such occupation, shall be deemed valid until the first day of May next after the possession under such agreement shall commence, and the rent under such agreement shall be payable at the usual quarter days for the payment of rent in the said city, unless otherwise expressed in the agreement. (1 N. Y. R. S. 744; 7th ed. 2200.)

The statute last above cited only applies when no time is agreed upon. When an entry is made under an agreement resting in parol, and the time is agreed upon, but extends beyond one year, the term is limited to one year only under the statute (2 R. S. 135, § 8), and if the tenant by consent of his landlord holds over the year, it becomes a tenancy from year to year. (*Craske v. Christian Union Publishing Co.*, 17 Hun, 319.)

A covenant to renew a lease under the same covenants contained in the original lease is satisfied by a renewal omitting the covenant to renew. (*Carr v. Ellison*, 20 Wend. 179.) See, also, *Tracy v. The Albany Exchange Company* (7 N. Y. 472).

The courts lean against such a construction of the contract as will lead to a perpetuity, and will not infer an agreement for a second renewal

from a general provision for the renewal of the lease with similar covenants. (*Id.*; *Banker v. Braker*, 9 Abb. N. C. 411; *Lynes v. Mayor*, etc., of N. Y., 105 N. Y. 153, 157.)

For covenants against the sale of liquors, etc., and against nuisances, see form No. 786.

By chapter 381 of Laws of New York of 1884, a married woman may contract to the same extent, with like effect and in the same form as if unmarried, and she and her separate estate shall be liable thereon, whether such contract relates to her separate business or estate or otherwise, and in no case shall a charge upon her

separate estate be necessary. (Laws of N. Y. of 1884, p. 465.) Before the passage of this act it was held to be necessary that a contract made by a married woman, including a lease, should be either for the benefit of her separate estate or should be in express terms made a charge upon her separate estate. See *Yale v. Dederer* (18 N. Y. 365; S. C., 22 id. 457; S. C., 68 id. 329); *Corn Exchange Insurance Co. v. Babcock* (42 id. 613). Under the above provisions this clause is no longer necessary to be inserted in a lease made by a married woman in that State.

See, also, section 21 of chapter 272 of Laws of New York of 1896, by which act chapter 381 of Laws of New York of 1884 is repealed.

No. 784.

Another short form of lease of house, etc.

This indenture, made the — day of —, one thousand — hundred and —, between A. B., of etc., party of the first part, and C. D., of etc., party of the second part, witnesseth: That the said party of the first part has letten, and by these presents doth grant, demise, and to farm let unto the said party of the second part, all that certain lot, etc., situated (describing premises leased), with the appurtenances, for the term of (— years), from the — day of —, one thousand — hundred and —, at the yearly rent or sum of — dollars, to be paid in equal (quarter yearly) payments.

And it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises and to remove all persons therefrom. And the said party of the second part doth hereby covenant to pay the said party of the first part the said yearly rent as herein specified (add other covenants as may be required; see last form, No. 783). And that at the expiration of the said term, the said party of the second part will quit and surrender the premises hereby de-

mised in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

And the said party of the first part doth covenant that the said party of the second part, on paying the said yearly rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.¹

A. B. [L. S.]²

C. D. [L. S.]

Sealed and delivered in presence of

E. P.

(Certificate of acknowledgment by both parties, or of proof by subscribing witness, as in forms Nos. 6, etc.)

(Agreement of surety, if required, as in last form.)

1. See notes to last form, No. 783. Revised Statutes of New York to a
For agreement of surety, see end of grant in fee or of a freehold estate.
last form. (1 N. Y. R. S. 738, § 137; 7th ed.

2. A seal is only required by the 2194.)

No. 785.

Short form of lease to be executed by both parties.

This is to certify that I have let and rented unto C. D. the (describe the premises), with the appurtenances, and the sole and uninterrupted use and occupation thereof, for the term of (— years) from the — day of —, 1—, at the yearly rent of — dollars, payable (stating terms of payment, as in form No. 784).

Dated the — day of —, 1—.

A. B.

(Signature of landlord.)

This is to certify that I have hired and taken from A. B. the above mentioned premises for the term of (— years) from the — day of —, 1—, at the yearly rent of — dollars, payable (stating terms of payment, as above). And I do hereby promise to make punctual payment of the rent, in manner aforesaid, and to quit and surrender the premises

at the expiration of the said term, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted.

Given under (my) hand (and seal) this — day of —,
1 —.¹

C D

(Signature of tenant.)

STATE OF NEW YORK, } ss.:
County of —,

On this — day of —, in the year 1—, before me personally came A. B. and C. D., to me known to be the individuals described in and who executed the foregoing instruments respectively subscribed by them, and to me severally acknowledged the execution of said instruments. (Or, follow other forms of acknowledgment as contained in forms Nos. 6, etc.)

E. F.

(Official title.)

(Surety clause, following form No. 786.)

1. See notes to form No. 783.

No. 786.

A building lease.

As in form No. 783, to the description of premises, and from thence as follows: All that piece or parcel of ground, containing in length — feet, and in breadth — feet, or thereabouts, situate, etc. (describing lot): To have and to hold the said piece or parcel of ground above mentioned unto, etc. (continuing as in form No. 783, from (*) to (†)), and from thence as follows:

And the said C. D., for himself, his heirs, executors and administrators, doth covenant, grant and agree to and with the said A. B., his heirs and assigns, that he, the said C. D., his executors, administrators or assigns, will make payment of the aforesaid yearly rent of — dollars, at the days and times, and in such manner and form as hereinbefore is limited and appointed for the payment thereof, according to the true intent and meaning of these presents, clear of and over and above all taxes, assessments. and other charges whatsoever:

And that he, the said C. D., his executors, administrators or assigns, shall and will on or before the — day of —, next ensuing the date hereof, at his and their own proper costs and charges in all things, make, erect, set up and finish, or cause or procure to be made, erected, set up and finished, upon the said piece or parcel of ground hereinbefore mentioned and described, one good and substantial house of brick, of three stories high, besides the garrets, the lower story whereof to be at least — feet high, the next story over that to be likewise — feet high at the least, the third story to be — feet high at the least, and the garrets to be — feet high at the least; and shall and will make, or cause to be made, to every room thereof (the garrets excepted) — handsome sash windows, of good carpenter's or joiner's work, each of them — feet high and — feet broad at the least, and shall and will well and sufficiently sash and glaze the same with good — glass, and shall and will ceil all the floors overhead with lime and hair, without any loam, and make convenient — windows to all the garrets; and shall and will make convenient doors, with hooks, hinges, locks and keys to all the rooms of the said building and floor with — boards all the floors, and nail them with eight penny nails; and make convenient chimneys with brick, lime and sand, and (freestone) hearths, and (stating the other requirements of the building; or, in like manner describe the building to be erected).

And that the said C. D., his executors, administrators or assigns, shall and will from time to time, and at all times during the said term of (— years) well and sufficiently repair, uphold, support, maintain, sustain, amend and keep the said building and tenement so erected and finished, in, by and with all manner of needful and necessary reparations whatsoever; and the same being in and by all things, so well and sufficiently repaired, upheld and kept in good and sufficient repair, shall and will at the end, or other sooner determination of the said term of (— years) hereby granted, peaceably and quietly leave and surrender, and yield up unto the said A. B., his heirs or assigns, together with all and every the (doors, windows, shutters, locks, keys, bolts, staples,

latches, hooks, hinges, wainscots, cisterns, pipes, pumps, conduits, dressers, tables, shelves, hearths, grates, stoves, chimneys, chimney-pieces, sashes and glasses, and all other)¹ fixtures and appurtenances of and belonging to the same.

And the said C. D. doth hereby further covenant, grant and agree that neither he, the said C. D., his executors or administrators, nor any other person or persons on his or their account, shall or will at any time during the said term hereby granted, sell or retail any beer, ale or other liquors whatsoever, nor keep any victualling or other such public house of entertainment within the said building or tenement so to be erected as aforesaid, nor use, permit or suffer the trade of a tallow-chandler, or other such like offensive trade to be carried on therein, without the license of the said A. B., his heirs or assigns, first had and obtained in writing.

Provided, also, nevertheless, and it is further covenanted and agreed, by and between the said parties to these presents, that if the said C. D., his, etc., do not before the — day of — aforesaid, at his and their own proper costs and charges, make, erect, set up and finish the said house, building or tenement in all things as he, the said C. D., hath before covenanted and agreed to do, or if the said C. D., his executors, administrators or assigns, shall use such building or tenement when erected, or permit the same to be used as an inn, victualling house, or house of entertainment, or use, permit, or suffer, or sell, or retail, therein or upon said premises, any beer, ale or other liquors whatsoever, or use, permit or suffer the business of a (tallow-chandler) or such like offensive trade to be carried on therein; that then and from thenceforth this present lease or demise, and everything therein contained shall cease, be void and of no effect; and the estate hereby granted to the said C. D., his executors, administrators and assigns, shall cease and determine to all intents, constructions and purposes whatsoever; anything herein contained to the contrary thereof in any wise notwithstanding.

And the said A. B. doth for himself, his heirs, executors and administrators, covenant, grant and agree, to and with the said C. D., his executors, administrators and assigns, that he, the said C. D., his executors, administrators and assigns,

paying the rent, and performing all and singular the covenants and agreements before, in and by these presents, comprised, reserved and contained on his and their part and behalf, to be paid, done, performed and kept, shall and may lawfully, peaceably and quietly have, hold, occupy, possess and enjoy the said piece or parcel of ground hereinbefore granted and demised, together with the said house, building or tenement, to be thereon erected and built as aforesaid, with the appurtenances, for and during the said term of (— years) hereinbefore granted, without any lawful let, suit, trouble, molestation, eviction, expulsion or interruption of or by him, the said A. B., his heirs or assigns, or by any other person or persons whomsoever, lawfully claiming or to claim, by, from or under him, them, or any of them, or by or with any of their privity, assent, consent or procurement.

n witness whereof, etc. (as in form No. 783).

In presence of

E. F.

A. B. [L. S.]

C. D. [L. S.]

(Certificate of acknowledgment or proof, as in forms Nos. 6, etc.)

1. It is usual to insert this enumeration, or a similar one, in leases of this kind, although it does not appear to be necessary.

Philip's Church (107 N. Y. 610), as to effect of a release of covenant to build contained in a somewhat similar lease.

See *Smith v. Rector*, etc., of St.

No. 787.

A contract for erection of building.

Articles of agreement, made this — day of —, in the year one thousand — hundred and —, between A. B., of the (city) of —, in the county of — and State of —, of the first part, and C. D., of, etc., of the second part.

First. The said party of the second part doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said party of the first part, his executors, administrators or assigns, that he, the said party of the second part, his executors or administrators

shall and will, for the consideration hereinafter mentioned, on or before the — day of —, 1—, well and sufficiently erect and finish the new building upon the premises of the party of the first part upon — street, in the said city (or, otherwise describe location), agreeable to the drawings and specifications made by E. F., architect, and signed by the said parties and hereunto annexed, within the time aforesaid, in a good, workmanlike and substantial manner, to the satisfaction and under the direction of the said E. F., to be testified by a writing or certificate under the hand of the said E. F., and also shall and will find and provide such good, proper and sufficient materials, of all kinds whatsoever, as shall be proper and sufficient for the completing and finishing all the walls, etc., and other works of the said building mentioned in the (annexed) specifications, conditions and drawings, for the sum of — dollars.

And the said party of the first part doth hereby, for himself and his heirs, executors and administrators, covenant, promise and agree, to and with the said party of the second part, his executors and administrators, that he, the said party of the first part, his executors or administrators, shall and will, in consideration of the covenants and agreements herein, being strictly performed and kept by the said party of the second part, as specified, well and truly pay, or cause to be paid unto the said party of the second part, his executors, administrators or assigns, the said sum of — dollars, lawful money of the United States of America, in manner following: (state time and manner of payment). Provided, that in each of the said cases a certificate shall be obtained and signed by the said E. F.

And it is hereby further agreed by and between the said parties:

First. The specifications, conditions and the drawings are intended to co-operate, so that any works exhibited in the drawings and conditions, and not mentioned in the specifications, or *vice versa*, are to be executed the same as if it were mentioned in the specifications and set forth in the drawings, to the true meaning and intention of the said drawings, conditions and specifications, without extra charge

whatsoever. The specifications, drawings and conditions are hereby made a part hereof.

Second. The contractor, at his own proper cost and charges, is to provide all manner of materials and labor, scaffolding, implements, moulds, models and cartage of every description, for the due performance of the several erections.

Third. Should the owner, at any time during the progress of the said building, request any alteration, deviation, additions or omissions, from the said contract, he shall be at liberty to do so, and the same shall in no way affect or make void the contract, but will be added to or deducted from the amount of the contract, as the case may be, by a fair and reasonable valuation.

Fourth. Should the contractor, at any time during the progress of the said works, refuse or neglect to supply a sufficiency of materials or workmen, the owner shall have the power to provide materials and workmen, after three days notice in writing being given, to finish the said works, and the expense shall be deducted from the amount of the contract.

Fifth. Should any dispute arise respecting the true construction or meaning of the drawings or specifications, the same shall be decided by said E. F., and his decision shall be final and conclusive; but should any dispute arise respecting the true value of the extra work, or of the works omitted, the same shall be valued by two competent persons—one employed by the owner, and the other by the contractor—and those two shall have the power to name an umpire, whose decision shall be binding on all parties.

Sixth. The owner shall not, in any manner, be answerable or accountable for any loss or damage that shall or may happen to the said works, or any parts thereof respectively, or for any of the materials or other things used and employed in finishing and completing the same (loss or damage by fire excepted).

Seventh. The contractors, and each of them, to be responsible for each and every violation of the city ordinances caused by the obstruction of streets and sidewalks, and shall hold the owner harmless from any and all damage or ex-

pense arising therefrom ; said contractors, and each of them, shall be responsible for, and shall save and keep the owner harmless and indemnified from and against all liability by reason of injury or damage to person or property in consequence of obstruction of the street or sidewalk or of any materials or other thing therein or thereon if any, and from any excavation or want of light or other proper guard or warning.

Eighth. The contractors, and each of them, to take all necessary and proper steps to make, and to properly, carefully and skilfully make all excavations without injury to adjoining buildings and property, and to save and keep the owner harmless and indemnify him from and against all liability and damage by reason of excavations if any, and failure to properly, carefully and skilfully make the same, and to properly, carefully and skilfully do and perform all the work contracted for.

Ninth. The contractors, and each of them to save and keep the building referred to in this contract, and the lands on which it is situated, free from any and all mechanics' liens, and other liens, by reason of his work or any material or other thing used therein ; and if the contractors, or either of them do not, the owner may retain sufficient of the contract price to pay the same, and all costs by reason of or in consequence thereof, and may pay said lien or liens, if any, and costs, and deduct the amount thereof from the contract price.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year above written.¹

A. B. [L. S.]

C. D. [L. S.]

Sealed and delivered in presence of

E. F.

(Acknowledgment, etc., when acknowledged, as in forms Nos. 6, etc.)

1. See, also, forms Nos. 175 and 176; *bell v. Coon* (149 id. 556); *Schillinger Van Keuren v. Miller* (71 Hun, 68); *Weeks v. O'Brien* (141 N. Y. 199); *Duell v. McCraw* (id. 331); *Beardsley v. Cook* (143 id. 143); *Camp-*

No. 788.

Lease for years of farm lands.

This indenture, made this — day of —, in the year 1—, between A. B., of, etc., of the first part, and C. D., of, etc., of the second part, witnesseth: That the said A. B., as well in consideration of one dollar to him paid at and before the sealing and delivery hereof by the said C. D., as of the rents, covenants and agreements hereinafter reserved and contained on the part and behalf of the said C. D., (his) executors, administrators and assigns, to be paid, kept and performed, hath demised, granted and to farm let, and by these presents doth demise, grant and to farm let, to the said C. D., his executors, administrators and assigns, all, etc., [describing premises leased] (except the timber trees, and all young trees fit and proper to be raised and preserved for timber trees, now growing or being, or which shall hereafter grow or be in and upon the premises, or any part thereof, together with free liberty of ingress, egress and regress, to and for the said A. B., his heirs and assigns to sell, cut and carry away the same at fit and seasonable times of the year.)

To have and to hold, all and singular, the said premises above mentioned with the appurtenances, (except as before excepted) unto the said C. D., his executors, administrators and assigns, from the day of the date hereof, for and during the term of — years, then next and immediately ensuing, and fully to be complete and ended.

Yielding and paying therefor, from and immediately after the commencement of the said term, and during the continuance thereof, unto the said A. B., his heirs and assigns, the rent of — dollars, in and upon the — day of — in each year.

And the said C. D., for himself, his executors, administrators and assigns, doth covenant and grant to and with the said A. B., his heirs and assigns, by these presents, in manner following, that is to say: that he, the said C. D., his executors, etc., shall and will well and truly pay, or cause to be paid, unto the said A. B., his heirs or assigns, the said yearly rent above reserved, according to the true intent and mean-

ing of these presents, clear of and over and above all taxes and assessments whatsoever.

And also, that he, the said C. D., his executors, etc., shall and will, from time to time during the term of this present demise, bear, pay and discharge all taxes, charges and assessments, ordinary and extraordinary, which may hereafter, at any time during the continuance of the said term, be imposed or charged on the said demised premises, or any part thereof, or the said A. B., his heirs and assigns, for or in respect to the said premises, or any part thereof, and shall and will indemnify the said A. B., his heirs, executors, etc., of, from and against all damages, costs and charges which he or they may at any time sustain or be put to, by reason of any neglect in the due and punctual discharge and payment of the said taxes, charges or assessments.

And also, the said C. D., his executors, etc., shall and will duly plough, sow, use, employ and manure the land hereby demised in a due and regular course of husbandry, according to the custom of the country, and in like manner spend and employ in and upon the premises all the dung, compost and manure which shall happen to be yearly made or arise there during the said term; and shall also, from time to time during the said term, preserve and keep the fruit trees that are or shall be planted on the premises from any injury by ploughing or by cattle, or otherwise.

And also, that the said C. D., his executors, etc., shall and will, at all times during the said term hereby granted, well and sufficiently repair, maintain, amend and keep the premises hereby demised, in all and all manner of needful and necessary reparations and amendments whatsoever, when and as often as need shall require (having and taking in and upon the premises sufficient helps of wood and stone for the doing thereof, if the same be there, to be had without committing any waste or spoil, to be spent in and upon the premises only and not elsewhere), and the same being so well and sufficiently repaired, maintained, amended and kept at the end, or other sooner determination of the said term, unto the said A. B., his heirs and assigns, shall and will peaceably and quietly leave and yield up.

And, also, that he, the said C. D., his executors or administrators, or any of them, shall not, nor will at any time during the continuance of the said term, demise, let, set or assign over the term hereby granted, in the said premises or any part thereof, to any person or persons whomsoever, for any term or time whatsoever, without the license and consent of the said A. B., his heirs or assigns in writing, under his or their hands first had and obtained for such purpose.

And, also, that it shall and may be lawful to and for the said A. B., his heirs and assigns, and every or any of them, at all and every time and times convenient, within the last year of the said term, to enter into and have so much of the demised premises as in the same year shall be mete to be fallowed, and to plough and to fallow the same, or every or any part thereof, according to the usage and custom of the country there on that behalf, without any let, interruption or disturbance of the said C. D., his executors, etc., or of any other person or persons, by his or their means, assent or procurement.

And the said A. B. for himself, his heirs and assigns, doth covenant and grant, to and with the said C. D., his executors, etc., by these presents, that he, the said C. D., his executors, administrators and assigns, shall, or may at all times during the said term hereby granted, by and under the yearly rent, covenants, conditions and agreements herein contained, peaceably and quietly have, hold, occupy, possess and enjoy, all and singular, the said premises hereby demised, and every part and parcel thereof, with the appurtenances (except as before excepted), without molestation, let, trouble, hindrance, interruption or denial of him, the said A. B., his heirs or assigns, or of any person or persons whatsoever lawfully claiming, or to claim the same or any part or parcel thereof :

Provided, always, and these presents are upon this condition nevertheless, and it is the true intent and meaning of these presents, that, if it shall happen that the yearly rent hereinbefore reserved shall be behind and unpaid in part, or in all, by the space of — days after the same ought to be paid, according to the reservation aforesaid (and no sufficient distress can or may be found in and upon the premises),¹

In witness, etc. (as in form No. 783).² A. B. [L. S.]
C. D. [L. S.]

E. F.

1. By section 1505 of the New York Code of Civil Procedure, it is provided (distress for rent having been abolished by chapter 274 of Laws of New York of 1846) that where a right of re-entry is reserved and given to a grantor or lessor of real property, in default of a sufficiency of goods and chattels whereon to distrain for the satisfaction of rent due, the re-entry may be made, or an action to recover the property demised or granted, may be maintained

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property, and the grantor or lessor, or his heir, devisee or assignee, has a subsisting right by law to re-enter for the failure to pay the rent, he may maintain an action to recover the property granted or demised, without any demand of the rent in arrear, or re-entry on the property.

See, also, *Conkey v. Hart* (14 N. Y. 22); *Van Rensselaer v. Snyder* (13 id. 299, aff'g S. C., 9 Barb. 302); *Samson v. Rose* (69 N. Y. 411).

A clause in a lease which provides for the termination thereof at the lessor's election upon default in pay-

ment of rent, although in the form of a mere stipulation or contract, is still a condition, since it provides for ending the term, and forfeiture of the estate in case of the default. (*Horton v. N. Y. Central, etc., R. Co.*, 12 Abb. N. C. 30; aff'd, 102 N. Y. 697, without opinion.)

Upon breach of the condition, the lessors may resort to an action of ejectment to recover possession of the demised premises, although no right of re-entry is expressly reserved in the lease. (*Id.*)

2. See notes to form No. 783.

No. 789.

A lease in perpetuity.

This indenture, made the — day of —, in the year 1 —, between A. B., of, etc., and M. B., his wife, of the first part, and C. D., of, etc., of the second part, witnesseth: That the said A. B., for and in consideration of the sum of —, to him in hand paid, at and before the sealing and delivery of these presents by the said C. D., the receipt whereof is hereby confessed and acknowledged, and of the rents, covenants and conditions hereinafter contained, on the part of the said C. D., his heirs, executors, administrators and assigns, to be paid, kept and performed, hath granted, bargained, sold, demised, leased and to farm let, and by these presents doth grant, bargain, sell, demise, lease and to farm let, unto the said C. D., and to his heirs and assigns, all that certain farm, piece or parcel of land, situate, etc. (describing premises leased), to have and to hold the said farm, piece or parcel of land, with the appurtenances, unto the said C. D., his heirs and assigns, forever, yielding and paying therefor, unto the said A. B., his heirs and assigns, yearly and every year forever hereafter, the yearly rent of (fifty bushels of good and merchantable winter wheat), at (specifying place of payment), in and upon the — day of —, in each year.

And the said C. D., in consideration of the said grant and demise so aforesaid to him made, by the said A. B., hath

given, granted and confirmed, and by these presents doth give, grant and confirm, unto the said A. B., his heirs and assigns, a yearly rent of (fifty bushels of good, merchantable winter wheat), forever hereafter to be issuing, going, payable and taken, by and out of the lands and tenements hereinbefore described and conveyed: To have, hold, receive, take and enjoy the said yearly rent, unto the said A. B., his heirs and assigns, forever, the same to be paid at (state place of payment), in and upon the — day of — in each year, clear of, and over and above all taxes and reprises whatsoever, the first payment to be made on the — day of — next; (and in case it shall so happen that the rent above reserved, or any part thereof, shall be behind and unpaid by and for the space of thirty days next after any of the days of payment, then and in every such case it shall and may be lawful to and for the said A. B., his heirs and assigns, or any of them, into the whole or any part of the said lands and tenements, to enter, and there to distrain for the said rent, or the arrears thereof, and the distress so taken, to lead, drive and carry away, and the same to expose to sale at public vendue; and out of the moneys therefrom arising, to deduct the rent then due and in arrear, together with the costs of distress and sale, and to return the overplus (if any there be) unto the said C. D., his heirs or assigns.)¹

And the said C. D., for himself, his heirs, executors, administrators and assigns, doth covenant, grant and agree, to and with the said A. B., his heirs and assigns, that he, the said C. D., his executors, administrators and assigns, will from time to time, and forever hereafter, well and truly pay, or cause to be paid unto the said A. B., his heirs or assigns, the yearly rent above reserved and granted, at the days and times, and in manner aforesaid; and will also well and truly discharge and pay all taxes, charges and assessments, ordinary and extraordinary, taxed, charged, or assessed, and which may be at any time hereafter taxed, charged or assessed, to or upon the said lands and tenements, or any part or parcel thereof, or upon the said A. B., his heirs, executors, administrators or assigns, for or in respect of the said lands and tenements, or any part thereof, and indemnify

the said A. B., his heirs, executors, administrators and assigns, of, from and against any damages, costs and charges, which he, or they, or any of them, may sustain, or be put to, by reason of any neglect in the due and punctual discharge and payment of the said taxes, charges and assessments, or any part of them.

And the said A. B., for himself, his heirs and assigns, doth hereby covenant and agree, to and with the said C. D., his heirs and assigns, that he and they, and each of them paying the rent aforesaid, and performing, fulfilling and keeping all and singular the covenants, conditions and agreements herein contained, on his and their and each of their parts, to be performed, fulfilled and kept, shall and may lawfully, peaceably and quietly have, hold, possess, occupy and enjoy the lands and tenements hereby conveyed, and every part thereof, with the appurtenances, unto the said C. D., his heirs and assigns, without any suit, trouble, eviction, hindrance, interruption or disturbance, of, by, or from the said A. B., his heirs or assigns, or of, by, or from any person or persons whomsoever, lawfully claiming, or to claim by, from or under him, them or any of them; and that he, the said A. B., and his heirs, shall and will hereby warrant and forever defend the said premises to the said C. D., his heirs and assigns, against any person or persons lawfully claiming the same.

Provided always, nevertheless, and these presents and everything herein contained are upon this express condition, that if it shall at any time happen that the said yearly rent shall, in whole or in part, be behind, for the space of — days after any day of payment (and that no sufficient distress can be found upon the premises to satisfy such rent due and in arrear as aforesaid),² or if any or either of the covenants or conditions hereinbefore contained on the part of the said C. D., his heirs, executors, administrators and assigns, to be performed, fulfilled and kept, shall not be performed, fulfilled and kept, or shall be broken, then and in each and every such case, and from thenceforth, and at all times thereafter, it shall be lawful to and for the said A. B., his heirs and assigns, or any of them, into the whole of the said lands and

tenements, or any part thereof in the name of the whole, to re-enter, and the same, as his and their former estate, to have again, re-possess and enjoy; and the said C. D., his heirs, executors, administrators and assigns, and all others thereout, and from thence utterly to expel; put out and remove; and upon such re-entry, this indenture and the estate hereby created shall be utterly void, anything herein contained to the contrary thereof in any wise notwithstanding.³

In witness, etc. (as in form No. 783.)

A. B. [L. S.]

C. D. [L. S.]

Sealed and delivered in presence of

E. F.

(Acknowledgment or proof, as in forms Nos. 6, etc.)

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| 1. As to abolition of distress for rent in the State of New York, and as to remedies under leases in that State, see note 1 to form No. 788. | 2. See note 1 to this form and the note therein referred to. |
| | 3. See notes to form No. 783. |

No. 790.

A lease for lives.

This indenture, made the — day of —, in the year 1 —, between A. B., of, etc. (and M. B., his wife), of the first part, and C. D., of, etc., of the second part, witnesseth: That the said party of the first part, for and in consideration of one dollar, to him in hand paid by the said C. D., at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and of the rents and covenants hereinafter mentioned and contained on the part and behalf of the said party of the second part, his executors, administrators and assigns, to be paid, kept and performed, hath demised, granted and to farm let, and by these presents doth demise, grant and to farm let, unto the said party of the second part, his executors, administrators and assigns, all, etc. (describing premises leased) (excepting and reserving out of the premises hereby granted, all streams fit for mills, and a sufficient quantity of land for building mills and

dams, abating at the rate of one bushel of the said rent for every four acres for either of the said purposes).

To have and to hold the said lot of land, with the appurtenances (except as before excepted), unto the said party of the second part, his executors, administrators and assigns, from the day of the date hereof, for and during the natural lives of the said party of the second part, and of E. F., of, etc., and G. H., of, etc., and for and during the natural life of the longest liver of them, so always as that the said term shall endure at least thirty-one years.

Yielding and paying unto the said party of the first part, his heirs and assigns, yearly and every year during the term aforesaid, at such place in the county of — as the said party of the first part, his heirs or assigns, shall for that purpose, from time to time, appoint, the rent of (— bushels of good, merchantable winter wheat), on the — day of — in every year. The first payment to be made on the — day of —, in the year 1—.

And the said party of the second part, for himself, his executors, administrators and assigns, doth by these presents covenant, grant and agree, to and with the said party of the first part, his heirs and assigns, in manner following, to wit: that he, the said party of the second part, his executors, administrators and assigns, shall and will well and truly pay, or cause to be paid unto the said party of the first part, his heirs and assigns, the yearly rent above reserved, according to the true intent and meaning of these presents, clear of, and over and above all taxes and expenses whatsoever.

And also, that the said party of the second part, his executors, administrators or assigns, shall and will settle on (or, take actual possession of) the said premises, within one year from the day of the date of these presents, and shall and will, within the space of — years, to be computed from the day of the date of these presents, plant — apple trees on the said premises hereby described, on some convenient part thereof, in straight lines crossing each other at right angles, at the distance of — feet from each other, and as often as any of the said trees shall die or decay or be destroyed, during the term aforesaid, shall and will plant

other trees in the place or stead of those which shall die, decay or be destroyed, and the said trees shall maintain and keep in good and sufficient order, and that, if default shall, at any time during the said term, be made in planting the said apple trees, or any of them, or in replacing such as shall decay or be destroyed in manner and form hereinbefore provided, that then, and in such case, the said party of the second part, his executors, administrators or assigns, shall and will pay, to the said party of the first part, his heirs or assigns, within one year after such default shall be made, the sum of two dollars) for every apple tree so deficient.

And also, that the said party of the second part, his executors, administrators and assigns, shall and will from time to time, during the term aforesaid, retain, keep and set apart — acres of the said land for wood, and shall not, nor will not, cut or destroy, or permit any person or persons whatsoever, to cut or destroy any part of the timber and wood growing thereon, excepting only for making or repairing the buildings to be erected on the said piece or parcel of land, and for necessary fencing and fuel for a dwelling house on the same.

And that the said party of the second part, his executors, administrators and assigns, shall and will pay all ordinary or extraordinary taxes assessed or imposed on the said land, and shall and will, at the expiration of the said term, peaceably and quietly give and yield up the possession of the said piece or parcel of land, with the said buildings and fences, which now are, or hereafter may be erected thereon, in good repair, to the said party of the first part or his assigns.

Provided, always, and these presents are upon condition nevertheless, that if the said yearly rent of (— bushels of good, merchantable winter wheat), or any part thereof, shall be behind and unpaid for the space of (six months) after any of the days hereby limited for payment thereof, or if the said party of the second part, his executors, administrators or assigns, shall neglect or refuse to perform any of the covenants contained in these presents, that then, and from thenceforth, it shall and may be lawful, to and for the said parties of the first part, their heirs or assigns, into the

said piece or parcel of land hereby demised, to re-enter, and the same and every part thereof to have again, repossess and enjoy, as in their first and former estate, anything herein contained to the contrary thereof notwithstanding.

And provided further, that if the said party of the second part, and E. F. and G. H., or any of them, shall not reside on the lands hereby demised, and none of them can, at the expiration of the said thirty-one years, after reasonable search and inquiry, be found, that then, and in every such case, and after the expiration of one year from the date of a notice to be given in writing by the said party of the first part, his heirs or assigns, to the tenant of the said land hereby demised, and that such search and inquiry have been made without effect, it shall and may be lawful to, and for the said A. B., party of the first part, his heirs or assigns, into the said piece or parcel of land, or into any part thereof, in the name of the whole, to re-enter, and the same to have again as his first and former estate, unless one of the said persons shall be produced before a (county judge of any county of the State of New York), or proof made by the affidavit of two or more credible witnesses, before any one of the said judges, that one of the said persons is in full life, and unless the said A. B., party of the first part, his heirs or assigns, shall receive a certificate of such production or proof, and a note of the place of residence of such person, before the expiration of the said year, signed by the said judge.¹

And the said A. B., party of the first part, for himself, etc., (insert covenant of quiet enjoyment, as in form No. 783.)²

In witness whereof, etc. (as in form No. 783).

A. B. [L. S.]

M. B. [L. S.]

C. D. [L. S.]

Sealed and delivered in presence of

E. F.

(Acknowledgment or proof, as in forms Nos. 6, etc.)

1. See, also, as to proceedings to discover the death of a life tenant by a person entitled to claim real property, after the death of another who has a prior estate therein, N. Y. Code Civil Procedure, §§ 2302-19.

2. Section 19 of title 4 of chapter 1 of part 2 of the New York Revised Statutes provides that any person having any rent due upon any lease for life or lives, may have the same remedy to recover such arrears, by action of debt, as if such lease were for years. (1 N. Y. R. S. 747; 7th ed. 2202.)

Section 20 of same title provides that every person entitled to any rents dependent upon the life of any other, may, notwithstanding the death of such other person, have the same remedy by action or by distress, for

the recovery of all arrears of such rent that shall be behind and unpaid at the death of such other person, as he might have had if such person was in full life. (Id.)

By chapter 274 of the Laws of New York of 1846, distress for rent was abolished, and other proceedings were provided, in case of a provision in the lease for distress for non-payment of rent. These provisions are now contained in the N. Y. Code of Civil Procedure. See note 1 to form No. 788

No. 791.

Deed of surrender to the reversioner.

(N. Y. Rev. Stat., part 2, chap. 7, tit. 2, § 6.)

This indenture, made the — day of —, in the year 1—, between A. B., of, etc., of the one part, and C. D., of, etc., of the other part: Whereas, the said C. D., by his indenture of lease, bearing date, etc., did demise, set, and to farm let, etc. (reciting the property and the term as in the lease):

Now, these presents witness, that for and in consideration of — dollars, to the said A. B., in hand paid at the ensealing and delivery of these presents, by the said C. D., and to the intent and purpose that the said term, in the said lands and premises, may be wholly merged and extinguished, he, the said A. B., hath given, granted and surrendered, and, by these presents, doth give, grant and surrender unto the said C. D., and his heirs, all the said lands and premises in the said indenture of lease contained and demised as afore-said, and all the estate, right, title, interest, term of years, property, claim and demand whatsoever, of him, the said A. B., of, in, to, or out of the same, or any part or parcel thereof: To have and to hold the said lands and premises to the said C. D., his heirs and assigns, and to his and their only proper use and behoof.

And the said A. B. doth hereby for himself, his heirs, executors and administrators, covenant and agree, to and with

the said C. D., his heirs and assigns, that he, the said A. B., hath not at any time heretofore made, done, committed, executed, permitted or suffered any act, deed, matter or thing whatsoever, whereby, or wherewith, or by reason or means whereof, the said lands and premises hereby assigned or surrendered, or any part or parcel thereof, are or is, or may, can or shall be any ways impeached, charged, affected or incumbered.¹

In witness, etc. (as in form No. 783).

A. B. [L. S.]

Sealed and delivered in presence of

E. F.

(Acknowledgment or proof, as in forms Nos. 6, etc.)

1. Section 6 of part 2, chapter 7, title 2 of Revised Statutes of New York, provides that no estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing. (2 R. S. 134; 7th ed. 2326.)

Surrender is the yielding up of an estate for life or years, to him that hath the next immediate estate in reversion or remainder. (2 Kent Com. 112; Co. Litt. 337b; Schieffelin v. Carpenter, 15 Wend., p. 405.)

Where the unexpired term of a lease does not exceed one year, it may be surrendered by parol, although the lease was originally for a longer period. The statute relates to the estate of the tenant, and not to the terms of the instrument by which

it is created. (Smith v. Devlin, 23 N. Y. 363.)

Inasmuch as a valid lease by parol may be made for a year, one under seal having but a year to run, may be surrendered by a new parol one for that time. (Id.; Smith v. Kerr, 33 Hun, p. 572.)

When the parties make another lease, valid as a contract, whether by parol or otherwise, inconsistent in terms with the continuance of an existing lease, it operates as a surrender of the latter. (Schieffelin v. Carpenter, 15 Wend. 400, 406, 407; Smith v. Niver, 2 Barb. 180; Bedford v. Terhune, 30 N. Y. 453, 462; Coe v. Hobby, 72 id. 147, cited in Smith v. Kerr, *supra*.) See, also, Vandekar v. Reeves (40 Hun, 430), as to surrender by operation of law; and see, generally as to surrender, Sully v. Schmitt (31 N. Y. State Rep. 443); Spier v. Voss (30 id. 549; S. C., 9 N. Y. Supp. 532); Ramsay v. Wilkie (36 N. Y. State Rep. 864; S. C., 13 N. Y. Supp. 554); Chamberlain v. Dunlop (126 N. Y. 45; S. C., 36 N. Y. State Rep. 273); Ballou v. Baxter (28 N. Y. State Rep. 431; S. C., 8 N. Y. Supp. 15), among recent cases.

No. 792.**Surrender of lease by lessee to lessor to be endorsed on the lease.**

(N. Y. Rev. Stats., part 2, chap. 7, tit. 2, § 6.)

Know all men by these presents, that I, the within named A. B., in consideration of — dollars to me in hand paid, at and before the ensealing and delivery of these presents, do for myself, my executors and administrators, bargain, sell, surrender, and yield up, from the day of the date hereof, unto the within named C. D., and his heirs (or, his executors and administrators), as well the within indenture of lease, as the lands and premises therein mentioned, and the term of years therein yet to come, with all my right, title and interest thereto, and covenant that the same is free and clear of all incumbrances of what kind soever, at any time, by me or by my privity, consent or procurement, done, committed or suffered.

In witness, etc. (as in form No. 30.)¹

A. B. [L. S.]

Sealed and delivered in presence of

E. F.

(Acknowledgment or proof, as in forms Nos. 89, etc.)

1. See note to last form, No. 791.

No. 793.**Lease of offices in building containing elevator, steam heating, etc.**

This agreement, made this — day of —, in the year one thousand — hundred and —, between The — Bank of —, N. Y., of the first part, and A. B., etc., of the second part, witnesseth: That the said party of the first part hath agreed to let, and hereby doth let to the said party of the second part, and the said party of the second part hath agreed to hire and take, and hereby doth hire and take, from the said party of the first part, the room known and designated as No. —, in the — story of the building situate on the — side of — street, in the said city of —, known as "The — Bank Building," and in the street numbering of said city designated as Nos. — and — street, to be used as (stating purpose), and for no other purpose, for the term of —

year (or, years), to commence on the — day of —, 1 —, at 12 o'clock at noon on that day, and to end on the — day of —, 1 —, at 12 o'clock at noon on that day, at the annual rent of — dollars, lawful money of the United States, and to be paid in equal quarterly payments on the first business day of February, May, August and November in each and every year during and until the end of said term, to the said party of the first part, at its banking house in the said city of —, or to such agent as said party of the first part, its successors or assigns, may at any time hereafter appoint and designate.

And it is hereby mutually understood and agreed, by and between the said parties, that the aforesaid leasing, letting and hiring is upon the following conditions, all and every of which the said lessee, for himself, his executors, administrators and assigns, doth covenant and agree, to and with the said lessor, its successors and assigns, to keep and perform :

First. The said lessee shall pay to the said lessor, its agent or assigns, the said specified rent, at the times and place and in the manner hereinbefore provided ; and in case of non-payment of the said rent at the said times and place, or in case the said leased premises shall be deserted or vacated, the said lessor, its agent or assigns, shall have the right to enter the same as the agent of the said lessee, either by force or otherwise, without being liable to any prosecution or damage therefor, and to relet the said premises as the agent of the said lessee, and to collect and receive the rent therefor ; and the said lessee hereby expressly agrees to give formal written notice to the said lessor, its agent or assigns, on or before the first day of February, 1 —, of his decision as to the rehiring or the surrender of the said leased premises at the end of said term.

Second. Neither the premises hereby leased, nor any part thereof, shall be sublet, nor shall this lease, nor the term hereby demised, nor any part of said lease or term, be assigned without the consent in writing of the said lessor or its assigns first having been indorsed or written on this instrument. Neither shall said premises be used, nor shall they be permitted to be used for any purpose other than

hereinbefore specified; and if said premises, or any part thereof, shall be so sublet, or said lease or term, or any part of said lease or term, assigned without said written consent, or said premises, or any part thereof, be used except as aforesaid, the said lessor or its assigns, by reason of either or any of said acts, shall have the right to terminate and end this lease, and to re-enter and relet the said premises.

Third. The said lessee shall quit and surrender the said premises at the end or sooner determination of said term, in as good condition as the reasonable and proper use thereof will permit, and not make any alterations, additions or improvements in said premises without the written consent of the said lessor or its assigns; and all alterations, additions or improvements which shall be made upon said premises by either of the parties hereto, except movable office fixtures, put in at the expense of the lessee, shall be the property of the lessor or its assigns, and shall remain upon and be surrendered with the premises as a part thereof, at the termination of this lease, without any hindrance, molestation or injury.

Fourth. The rules and regulations in regard to said building, printed at the end of this lease, and such further reasonable rules and regulations as the lessor shall hereafter adopt and notify to the said lessee regarding the use and enjoyment thereof, shall be deemed and taken as a part of this lease, and shall, during the said term, be in all things observed and performed by the said lessee, his clerks, agents and servants, in the same manner as if the same were incorporated into the body of this lease.

Fifth. If during the term of this lease, the said building or the demised premises are destroyed by fire or the elements, or partially so destroyed, so as to render the said premises wholly unfit for occupancy, and if they be so badly injured that they cannot be repaired within sixty days from the happening of such injury, then this lease shall cease, and become null and inoperative from and after the date of such damage or destruction, and the said lessee shall immediately surrender the said leased premises and all interest therein to the said lessor or its assigns, and the said lessee shall pay rent as aforesaid, only to the time of such surrender; and in case

of destruction or partial destruction, as above mentioned, the said lessor, or its assigns, may re-enter and repossess said premises, discharged of said lease, and may remove all parties or property therefrom; and if said premises shall be repairable within sixty days from the happening of such injury, then no rent shall run or accrue after said injury while the repairs thereof are being made, and the said lessor shall make such repairs with all reasonable speed, and the rent shall recommence immediately after such repairs shall have been completed. But if said premises shall be so slightly injured by fire or the elements as not to be rendered unfit for occupancy, then the said lessor agrees that the same shall be repaired as soon as practicable, and in that case the rent accruing shall not cease or determine.

Sixth. The said lessor shall have in operation in said building a passenger elevator, which shall be run from 8 A. M. to 7 P. M. on every business day, during said term, but not during Sundays or holidays; all ordinary cleaning, oiling and repairing of said elevator shall be done either before or after business hours; but in case it shall at any time become necessary by reason of accident or from any injury to the elevator, engine, boiler, machinery, or anything appertaining thereto, to make any extraordinary repairs or improvements, the lessors shall have the right to stop the operation of such elevator for such time, during business hours, as shall be necessary to make the needed repairs, and put said elevator, engine, boiler and machinery in good working order, but no more time shall be employed than is absolutely necessary.

Seventh. Said lessor shall keep in the said leased premises a steam or other warming apparatus, sufficient to properly warm said premises at all times when artificial heat is necessary and sufficiently supplied with steam to render the premises at all times comfortable for occupation for the purpose above specified; and also shall cause said premises to be properly cared for and cleaned by the janitor of said building during the said term unless the said lessee shall prefer to have the said premises cared for and cleansed at his own expense and by his own employes, in which case permission in that respect will be given by the lessor, subject to such gen-

eral written regulations and rules as said lessor shall adopt for and as applicable to such cases; it is, however, expressly understood and agreed that the lessor shall be in no wise responsible to any tenant for any loss of property from the building or leased premises, however occurring, or any damage done to the furniture or other effects of any tenant by the janitor or any of his or its employes.

Eighth. Said lessor shall not be liable for any damage to any property at any time in said premises or building from water, rain or snow, which may leak into, issue or flow from any part of said building, of which said leased premises are a part, or from the pipes or plumbing work of the same, or from any other place whatever, unless such damage shall be caused by the negligence of the lessor, its agents or servants; and the said lessee shall give to the said lessor prompt notice in writing of any accident to or defect in any of the water, gas or warming pipes or apparatus in said premises, which shall be remedied by the lessor as soon as practicable.

Ninth. In case of the violation of the herein contained covenants, agreements, conditions, rules and regulations, or any of them, by said lessee, this lease shall thenceforth (at the option of the said lessor) become null and void, and the said lessors may re-enter without notice or demand and remove all persons and things therefrom, and in such case the rent shall be apportioned and paid on and up to the day of such entry and removal by said lessors. And the said lessee shall be liable in addition for all loss or damage resulting from any such violation as aforesaid

In witness whereof, the said party of the first part hath hereunto caused its corporate seal to be affixed and these presents to be subscribed by
 { SEAL OF } C. D., its president, and the said party of the
 { LESSOR. } second part hath hereunto set his hand and seal the day and year first above written.

The — Bank,

by C. D., its President.

A. B.,

[L. S.]

Signed, sealed and delivered in presence of

G. H.

— CITY AND COUNTY, ss.:

On the — day of —, 1—, C. D., to me known, came before me, who being by me sworn did say, that he resides in the city of —, and is president of the — bank of —, that the seal affixed to the foregoing instrument is the corporate seal of said bank, and was thereto affixed by the order of the board of directors of said bank, and that he signed the same as president of said bank by virtue of a like order of said board of directors. — —

— CITY AND COUNTY, ss.:

On this — day of —, 1—, A. B., to me known to be the individual described in and who executed the foregoing instrument, came personally before me and acknowledged that he executed the same.

M. N.

(Official title.)

In consideration of the letting of the premises within described, and of the sum of one dollar, I (or, we) do hereby become surety (or, sureties) for the punctual payment of all the rent and the performance of all the covenants in the within written agreement mentioned to be paid and performed by A. B., as therein specified; and if any default shall at any time be made therein, I (or, we) do hereby promise and agree to pay unto the said lessors in said agreement named, the said rent, or any arrears thereof that may be due, and fully satisfy the conditions of said agreement and all damages that may accrue by reason of the non-fulfillment thereof, without requiring notice or proof of demand being made.

Given under my (or, our) hand and seal this — day of —, 1—.

— — [L. S.]

Signed, sealed and delivered in the presence of

F. G.

(Acknowledgment by surety or sureties, as above.)

RULES AND REGULATIONS REFERRED TO IN THE FOREGOING LEASE.

1. The sidewalk, entry, passages, elevator and stairway shall not be obstructed and shall not be used otherwise than for ingress and egress to the leased premises.

2. The floors, skylights and windows in the passageways, or parts of the building in general use shall not be covered or obstructed.

3. The water-closets shall be used only for the purposes intended in constructing them, no sweepings or refuse shall be put in them and all damage resulting from their misuse shall be borne by the tenant causing it or by whose agents or servants it has been caused.

4. No signs or notices shall be placed on any part of the outside or inside of the building excepting on the glass of the doors and windows, nor any on the glass of the doors and windows, unless they shall first have been approved by the lessor by indorsement on the lease specifying the places where and the manner in which they shall be put thereon.

5. A tablet or tablets will be placed in main halls or at other proper and conspicuous place or places in the building selected by the lessor containing the names of each lessee, and the number of the room or rooms occupied by him.

6. Tenant shall not do or permit anything to be done to increase the rate of fire insurance, or obstruct or interfere with rights of other tenants or violate the fire laws or the laws and ordinances of the health board and health officers of the city and state.

7. The lessor shall have power to limit the weight and prescribe the proper position of safes, and all damage done to the building in the taking out and putting in of safes, and while on the premises shall be made good and paid for by the tenant causing the safe to be brought on premises.

8. The tenant shall remove all signs, and otherwise leave the windows and doors in condition in which they received them and on termination of lease deliver up all keys, belonging to locks remaining in the building.

9. No methods of heating other than provided in the lease, shall be used by the lessees or any of them without special agreement in writing, providing for the lighting of fires and storing and moving of fuel and ashes.

10. Tenants are not to employ any other person than the janitor of the building for work of cleaning, lighting fires, storing and moving fuel and ashes, except as provided in the seventh section of lease.

11. The lessor shall have a right of entry by its agents at reasonable hours, to examine the premises let, and to make necessary repairs and alterations for the safety and preservation of the building and care of the rooms. Also to exhibit premises to be let and to put on them the usual notice of the fact that they are for rent, which shall not be removed during three months previous to expiration of the lease.

12. The lessees are not to be guilty of loud and boisterous conduct in the building or of permitting such conduct by their employes ; or of smoking or permitting their employes to smoke in the elevator ; or of defacing the building or allowing their employes to do so.

13. The lessees shall not throw or permit the throwing by their employes of anything out of the windows or doors or down the passages or skylights of the building.

14. The lessees shall not keep animals in or about the building or permit their agents or employes to keep them.

15. The lessor reserves the right to make such other rules and regulations as may seem desirable for the safety, care cleanliness and proper regulation of the premises and for the preserving of good order therein.

16. The lessor shall not keep kerosene, burning fluid or other illuminating material in the building excepting that in addition to gas, candles may be used.

17. The lessee shall take and hold his lease in every case, subject to the right of the adjoining owners of the property on the east and west of said building to build up and obscure the windows opening over such adjoining property or any of such windows. But in case such windows or any of them shall be so obscured the tenant whose premises shall be affected thereby may terminate his lease, his rent

being apportioned to the time of the termination of such lease.

18. The lessee shall not introduce or admit into the leased premises any telephone wire or other means of external communication, except by permission of the lessor, given in writing, and subject to the latter's restrictions and requirements.

19. No shades or awnings shall be put up by the lessees, except with the written consent of the lessor.

20. The elevator shall be run only by the employes of the lessor.

21. All complaints by the lessees shall be made in writing and addressed to the lessor.

No. 794.

Agreement for lease.

See forms Nos. 171, 172.

No. 795.

Lease containing chattel mortgage clause.

A lease, made and executed between A. B., of, etc., of the first part, and C. D., of, etc., of the second part, the — day of —, in the year one thousand — hundred and —.

In consideration of the rents and covenants hereinafter expressed, the said party of the first part hath demised and leased and doth hereby demise and lease to the said party of the second part the following premises, viz.: (describing them), with the privileges and appurtenances, for and during the term of — years from the — day of —, 1—, which term will end on the — day of —, 1—, at 12 o'clock at noon. And the said party of the second part covenants that he will pay to the party of the first part, for the use of said premises, a (yearly) rent of — dollars, to be paid as follows: (stating times of payment).

And it is hereby agreed that the said party of the first part shall have a lien as security for the rent aforesaid upon the following goods and chattels, to wit: (describing them), and also upon all the goods, wares, chattels, implements, fixtures,

tools and other personal property which are or may be put on the said demised premises, and such lien may be enforced on the non-payment of any of the rent aforesaid by the taking and sale of such property in the same manner as in cases of chattel mortgage on default thereof; said sale to be made on six days' notice, posted upon the demised premises, and served upon the party of the second part, or left at his place of residence.¹

And provided said party of the second part shall fail to pay said rent, or any part thereof, when it becomes due, it is agreed that said party of the first part may sue for the same, or re-enter said premises, or resort to any legal remedy. (The party of the second party agrees to pay all (stating kind of taxes) taxes to be assessed on said premises during said term.)

The party of the second part covenants that at the expiration of said term, he will surrender up said premises to the party of the first part, in as good condition as now, necessary wear and damage by the elements excepted.

Witness the hands and seals of the said parties the day and year first above written.

A. B. [L. S.]

C. D. [L. S.]

(Acknowledgment, if required, as in forms Nos. 6, etc.)

1. See *Buskirk v. Cleveland* (41 Barb. 610); *Van Vechten v. McKane* (69 Hun, 510).

TITLE II.

STATUTORY FORMS OF LEASES.

No. 796. Form of lease in State of Maryland.

797. Same in State of Virginia.

798. Same in State of West Virginia.

No. 796.

Form of lease in State of Maryland.

(Pub. Gen. Laws of Maryland, art. 21, § 62.)

This lease, made this — day of —, in the year 1—, between — and —, witnesseth: That the said — doth

lease unto the said —, his personal representatives or assigns (here describe property), for the term of — years, beginning on the — day of —, in the year 1—, and ending on the — day of —, in the year 1—, the said — paying therefor the sum of — dollars, on the — day of —, in each and every year.¹

Witness their hands and seals.

—. [SEAL.]

—. [SEAL.]

(Acknowledgment, if acknowledged, as in forms Nos. 48, etc.)

1. By section 63 of article 21 of the Code of Maryland, the above form of lease is given and is declared to be sufficient, and that any covenant, limitation, restriction or proviso allowed by law may be added, annexed to, or introduced therewith.

By section 64, id., any other form of lease conforming to the rules thereinbefore laid down, or to the rules of law, shall be sufficient.

See, also, forms 48, 49, 50 and notes thereto.

No. 797.

Form of lease in State of Virginia.

(Code of Virginia, § 2440.)

"This deed, made the — day of —, in the year 1—, between (here insert the names of parties), witnesseth: That the said — doth (or, do) demise unto the said —, his personal representatives and assigns, all, etc. (here describe the property), from the — day of —, for the term of —, thence ensuing (*) yielding therefor during the said term the rent of (here state the rent, and mode of payment.)

"Witness the following signature and seal (or, signatures and seals)."

In presence of

(Signatures and seals.)

M. B.

(Acknowledgment, as in form No. 140.)

1. A deed of lease may be made in the following form, or to the same effect: (here is inserted the above form of lease as quoted). (Code of Virginia, § 2440.)

See, also, form No. 140, and note thereto.

No. 798.**Form of lease in State of West Virginia.**

(Code of West Virginia, chap. 72, § 5.)

“ As in last form, No. 797, to (*) and from thence as follows:
 the said —— (the lessee) paying to the said —— (the lessor)
 therefor during the said term, the rent of (here state the
 rent, and mode of payment.)

Witness, etc. (as in last form, No. 797).¹

(Signatures and seals.)

In presence of

M. B.

(Acknowledgment, as in form No. 142.)

1. A deed of lease may be in the following form, or to the same effect: See, also, forms Nos. 142-144 and notes thereto.

(here is inserted the above form of
 lease, as quoted.) (Code of West
 Virginia, chap. 72, § 5.)

CHAPTER XXVI.

Forms of Letters of Credit and Guaranties.

No. 799. General letter of credit and guaranty.

800. Special letter of credit.

801. Guaranty of credit.

802. Guaranty to bank.

803. Guaranty of payment of instrument, indorsed thereon.

No. 799.**General letter of credit and guaranty.**

NEW YORK, — — —, 1—.

SIR:— We hereby agree to accept and pay at maturity, any draft or drafts on us at sixty days' sight, issued by Messrs. K. D. & Co., of your city, to the extent of (thirty-five thousand) dollars, and negotiated through your bank.

We are respectfully, sir, your obedient servants,

H. & C.

I hereby guarantee the due acceptance and payment of any draft issued in pursuance of the above credit.¹

J. C.

1. A general letter of credit authorizes any person to whom it is presented to act upon the proposition therein contained; and when any person does act thereon, a contract arises between him and the maker of the instrument, in the same manner as if it had been addressed to him by name. (*Union Bank v. Coster's Executors*, 3 N. Y. 203.)

And such a letter of credit, if it authorizes more than a single transaction with the party to whom it is granted, may be honored by several persons successively, keeping within the aggregate limit specified in the instrument. (*Id.*)

Where A., by a general letter of credit, undertook to accept and pay drafts to be drawn by B., to a given amount, and C., at the foot of the letter, wrote and signed a guaranty in the words given in the above form, *held*, that the letter and guaranty should be read and construed together, that the consideration of the guaranty was sufficiently expressed in the writing, and, therefore, that the guaranty was a valid undertaking within the statute of frauds. (*Id.*) See, also, *Draper v. Snow* (20 N. Y. 331), distinguishing the above cited case.

At the time of the above decision the statutes of New York required a

contract of guaranty to express the consideration. By the amendment of 1863, chapter 464, page 802, the words "expressing the consideration" were omitted. Such contract, therefore, now no longer is required to express the consideration, but it, or some note or memorandum thereof must still be in writing, and subscribed by the party to be charged therewith. See, also, as to effect of such amendment, among other cases, *Speyers v. Lambert* (6 Abb. Pr. N. S. 309); *Evansville Nat. Bank v. Kaufman* (93 N. Y. 273); *Drake v. Seaman* (97 id. 230); *Barney v. Forbes* (118 id. 580); *Beakes v. Da Cunha* (126 id. 293); and see *Crane v. Powell* (139 N. Y. 379); *Matthews v. Matthews* (154 id. 288); *Cheever v. Schall* (87 Hun, 32).

A consideration is necessary to render the guaranty valid, and although it is no longer necessary that it should be expressed in the written contract itself, if it is not so acknowledged it must be proved in order to

recover on the contract. (*Evansville Nat. Bank v. Kaufman, supra.*) The words "for value received" sufficiently express the consideration of a guaranty. (*Miller v. Cook*, 23 N. Y. 495.)

A written guaranty given by a third person to a creditor, that his debtor will thereafter pay to him a pre-existing debt, must, *it seems*, notwithstanding the amendment of the statute of frauds by chapter 464 of the Laws of 1863, expressly or by fair implication, disclose that the promise rests upon legal consideration (*Barney v. Forbes, supra*, p. 585), in which case the case of *Speyers v. Lambert* is said to have been overruled.

See, also, generally as to guaranty, form No. 240, and note thereto, and see further, as to letter of credit, *Bank of Montreal v. Recknagle* (109 N. Y. 482).

No. 800.

Special letter of credit.

NEW YORK, — — —, 1—.

MESSRS. W. J. B. & Co., Liverpool:

GENTLEMEN:—At the request of our mutual friends, Messrs. S. & T., and on their account, we beg leave to open a credit for £10,000, say ten thousand pounds sterling uncovered at any one time, in favor of Mr. J. D., to be negotiated by him in Rio de Janeiro by drafts on you at sixty days' sight. This credit to expire on — — —, 1—. You will of course keep Messrs. S. & T. advised as the credit is used, and they will attend to placing you in funds.¹

We are, gentlemen, your obedient servants,

B. B. & Co.

1. The above form of letter of credit is from the case of *Birckhead v. Brown* (5 Hill, 634), and under which it was held that a third person who had advanced money on drafts

drawn by S. in the form prescribed by the letter, and on the faith of it, could not maintain an action in his own name against B, though the firm at Liverpool refused to accept.

there being in such case no privity of contract save between B. and his firm.

Letters of credit and commercial guaranties are not negotiable instruments. (Id., per Bronson, J.)

Where a letter of credit is general, i. e., addressed to all persons, any one to whom it is presented may act upon and enforce it. Otherwise if the letter be addressed to a particular individual: for in such case he alone can acquire rights under it. (Id.) And see *Bennett v. Draper* (139 N. Y. 266).

See, also, *Evansville Nat. Bank v. Kaufman* (93 N. Y. 273, 287); *Drake v. Seaman* (97 id. 234); *Union Bank v. Carter* (3 id. 303); *Russell v. Wigginn* (2 Story, 213); *Lienow v. Pitcairn* (2 Paine, 517); *Bleeker v. Hyde* (3 McLean, 279); *State Nat. Bank v. Young* (14 Fed. Rep. 889); *Gelpcke v. Quentell* (59 Barb. 250); *Rogers v. Warner* (8 Johns. 119); *Whitney v. Groot* (24 Wend. 82); *Everson v. Gere* (122 N. Y. 290); *Johannessen v. Munroe* (84 Hun, 594), among other cases as to letters of credit.

No. 801.

Guaranty of credit.

MIDDLEPORT, *Feb. 6, 1*—.

MR. GATES:

SIR—I will be responsible for what stock M. E. M. has had or may want hereafter to the amount of — dollars.¹

C. M.

1. The foregoing contract was held in *Gates v. McKee* (13 N. Y. 232), to be a continuing guaranty, and not exhausted by purchases of and payments for stock to the amount mentioned. See, also, that case as to the rules of construction applicable to guaranties and other contracts of sureties.

See, also, *Agawam Bank v. Strever*

(18 N. Y. 502); *Rindge v. Judson* (24 id. 64); *Hayden v. Crane* (1 Lans. 181); *Sickle v. Marsh* (44 How. Pr. 91); *Lord v. Cohn* (13 N. Y. Week. Dig. 466); *Pratt v. Matthews* (24 Hun, 386); *City Nat. Bank of Poughkeepsie v. Phelps* (16 id. 158); *Knowles v. Cuddeback* (19 id. 590); *Delaware, L. & W. R. Co. v. Burkhard* (114 N. Y. 197); *Bennett v. Draper* (139 id. 266).

No. 802.

Guaranty to bank.

NEW YORK, *February 15, 1*—.

CITY BANK, Poughkeepsie, N. Y.:

We hold ourselves responsible for the payment of any sum, not to exceed five thousand dollars (\$5,000), Mr. C. H. W. may require of your bank for legitimate business purposes.¹

Yours respectfully,

P. & K.

1. In an action upon the above guaranty, it was held that it expressed

a sufficient consideration to validate it under the statute of frauds; and

that it was a continuing guaranty. (*City Nat. Bank of Poughkeepsie v. Phelps*, 86 N.Y. 484.)

Also, that the fact that the money procured by W., upon the strength of the guaranty, was not used by him in his business, was no defense, in the absence of evidence that such other use was with the knowledge of the bank, or that the bank advanced more money than was needed for his legitimate business purposes, or that it was loaned for other than those purposes, that the bank was not required to see to the use made by W. of the money, and that no notice was required to the guarantor, of the acceptance of the guaranty, it being an absolute one. (*Id.*)

The said bank after loans had been made to W., upon the faith of the guaranty, abandoned its State organization, and was reorganized as a National bank, as authorized by the act of 1865 (chap. 97). A portion of said loan had not been paid, new notes having been given in renewal. *Held*, that for whatever sum the defendant was bound to the State bank, when it was reorganized, that indebtedness passed to plaintiff; and conceding that plaintiff could not renew without the assent of defendant, or make fresh advances and still hold him liable, it had the right to enforce the liability to the State bank. (*Id.*) See, also, *Draper v. Bennett* (135 N.Y. 266).

No. 803.

Guaranty of payment of instrument indorsed thereon.

For value received, I (or, we jointly and severally) hereby guaranty the payment of the within (note).¹

Dated —, 1 —.

(Signature or signatures.)

1. See *Manrow v. Durham* (3 Hill, 584; *aff'd*, S. C., 2 N. Y. 533); *Draper v. Snow* (20 *id.* 331).

The words "for value received," sufficiently express the consideration of a guaranty. (*Miller v. Cook*, 23 N. Y. 495.)

Where the holder of a promissory note, acting for himself, sells the same, and promises the purchaser that it is good and will be paid at maturity, such promise is not col-

lateral to answer for the default of the maker, and is not within the statute of frauds. (*Milks v. Rich*, 80 N. Y. 269; S. C., 36 Am. Rep. 615, *aff'g* 15 Hun, 178.)

A guaranty written beneath a lease, and stating that it is made "in consideration of the demise of the premises above mentioned," sufficiently expresses a consideration. (*McKensie v. Farrell*, 4 Bosw. 192.)

See, also, note 1 to form No. 802.

Licenses.

See **Excise**; **Ferry Corporations**.

CHAPTER XXVII.

Forms Relating to Marriage.

(N. Y. R. S., art. 1, tit. 1, chap. 8, § 13, part 2, as amended by Laws of N. Y. of 1873, chap. 25.)

No. 804. Form of marriage certificate.

805. Form of examination of parties on oath as to their right to contract marriage.

806. Oath to be administered by minister or magistrate to parties, etc. on taking their examination.

807. Certificate of magistrate to be indorsed upon or annexed to form No. 804, when made by a minister, to entitle it to be filed and recorded.

No. 804.**Form of marriage certificate.**

(N. Y. R. S., part 2, chap. 8, art. 1, tit. 1, § 13.)

STATE OF NEW YORK, }
 — County, } ss.:

I hereby certify that on the — day of —, A. D. 1—, at the (city) of —, in the county aforesaid, I, A. B., a minister of the — church (or, the mayor of —, etc.),¹ joined in marriage M. N. of the — of —, in the State of —, and F. R. of the — of —, in the State of —; and that the said M. N. and F. R. did then and there declare that they took each other as husband and wife, and that there were present as attesting witnesses of such marriage C. D., of, etc., and E. F., of, etc.

That said M. N. and F. R. were known to me [or, were satisfactorily proved to me, by their oaths (or, by the oaths of I. B., of —, a person known to me)] to be the persons described in this certificate, and that they were of sufficient age to contract marriage, to wit, said M. N. of the age of at

least (eighteen) years, and said F. R. of the age of at least (sixteen) years.²

And I further certify that after due inquiry made, there appeared no lawful impediment to such marriage.

Dated at —, this — day of —, A. D. 1—.³

A. B.,

Mayor of the city of —
(or, Minister, etc.)

1. For the purposes of being registered and authenticated, according to the provisions of title 1 of chapter 8 of part 2 of the New York Revised Statutes, marriages may be solemnized only by the following persons:

1. Ministers of the gospel or of legally incorporated religious congregations, the leader of the Society for Ethical Culture of the City of New York, and priests of every denomination. 2. Mayors, recorders and aldermen of cities. 3. Judges of the County Courts, justices of the peace, and justices of the District Courts and police justices in the city of New York. 4. Justices and judges of courts of record. (2 N. Y. R. S. 138, § 8, as amended by Laws of N. Y. of 1889, chap. 415, p. 569.)

2. The age of legal consent for contracting marriage shall be eighteen years in the case of males, and sixteen years in the case of females. (Id., § 2, repealed by Laws of N. Y. of 1830, chap. 320, § 24, and inserted by Laws of N. Y. of 1887, chap. 24, p. 25.)

3. See section 13 of same title, as amended by Laws of New York of 1830, chap. 320, § 27, and by Laws of New York of 1873, chap. 25, § 2, as to this certificate and its contents. As to filing and entry thereof, see sections 14 and 15 of same title, cited in note 1 to form No. 807.

When solemnized by a minister or priest, the ceremony of marriage shall

be according to the forms and customs of the church or society to which he belongs. When solemnized by a magistrate, no particular form shall be required, except that the parties shall solemnly declare, in the presence of the magistrate and the attending witness or witnesses, that they take each other as husband and wife. In every case, there shall be at least one witness, besides the minister or magistrate, present at the ceremony. (Id., § 9.)

Every minister or magistrate who shall solemnize a marriage where either of the parties, within his knowledge, shall be under the age of legal consent, or an idiot or lunatic; or to which, within his knowledge, any legal impediment exists, shall be deemed guilty of a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court by whom he shall be tried. (Id., § 12.) See, also, N. Y. Penal Code, § 376, to same effect.

Every such original certificate, the original entry thereof, made as above directed, and a copy of such certificate, or of such entry, duly certified, shall be received in all courts and places, as presumptive evidence of the fact of such marriage. (Id., § 17, as amended by Laws of 1830, chap. 320, § 28), and see section 928 N. Y. Code Civ. Pro.

See, also, *Wingate v. Haskins* (20 N. Y. Week. Dig. 438); *In re Molter* (22 id. 507); *People v. Crawford* (62 Hun, 160, aff'd without opinion, 133 N. Y. 535).

To support an indictment for bigamy, it is a sufficient marriage in fact that the

parties agree to be husband and wife, and cohabit and recognize each other as such. It is immaterial whether a person who pretended to solemnize the contract was or was not a clergyman or magistrate, or that either party was deceived by his false representation of that character. (*Hayes v. People*, 25 N. Y. 390).

See, also, article 2 of chapter 272 of Laws of 1896, by which chapter the pro-

visions of the N. Y. Revised Statutes on this subject are repealed, and see as to registration of marriages the provisions of the public health law, chapter 661 of Laws of New York of 1893, § 22, as amended by chapter 138 of Laws of New York of 1897, p. 51.

See, also, § 282 of N. Y. Penal Code as amended by chapter 460 of Laws of 1893.

No. 805.

Form of examination of parties on oath, as to their right to contract marriage.

(N. Y. Rev. Stat., part 2, chap. 8, art. 1, tit. 1, § 11.)

— COUNTY, ss.:

M. N. and F. R., being severally duly sworn, say, and each for himself says, as follows: The said M. N. says: That his name is (giving name in full); that he resides at the (city) of —, in the county of — and State of —, and is of the age of (eighteen) years and upwards, having become of that age on the — day of —, 1—. That he knows of no legal impediment to his marriage to said F. R. And the said F. R. says: That her name is (giving name in full); that she resides at the (city) of —, in the county of — and State of —, and is of the age of (sixteen) years and upwards, having become of that age on the — day of —, 1—; that she knows of no legal impediment to her marriage with the said M. N.

M. N.

F. R.

(Jurat, as in form No. 32.)

1. If either of the parties between whom the marriage is to be solemnized shall not be personally known to him, the minister or magistrate shall ascertain from the respective parties their right to contract marriage; and, for that purpose, he may examine the parties, or either of them, or any other person, under oath, which he is hereby authorized to ad-

minister, which examination shall be reduced to writing and subscribed by the parties, and either of the respective parties making a false statement under this oath, shall be deemed guilty of willful and corrupt perjury, and shall be liable therefor. (2 N. Y. R. S. 140, § 11, as am'd by chapter 25 of Laws of 1873, p. 19.)

No. 806.

Oath to be administered by minister or magistrate to parties, etc., on taking their examination, last form, No. 805.

You do solemnly swear that the contents of this affidavit by you subscribed are true, so help you God.¹

1. See note 1 to last form, No 805.

No. 807.

Certificate of magistrate to be indorsed upon or annexed to marriage certificate signed by a minister to entitle it to be filed and recorded.

(N. Y. Rev. Stat., art. 1, tit. 1, chap. 8, part 2, § 15.)

I, F. G., a (name official title) residing in the city (or, town) of —, in the county of —, do hereby certify that (*) A. B., the minister by whom the within (or, annexed) certificate is signed, is personally known to me, and has acknowledged the execution of the said certificate in my presence.

In witness whereof, I have hereunto set my hand at —, on this — day of —, 1—. ¹

F. G.

(Official title.)

(Or, as above to (*) and from thence as follows: That the execution of the within (or, annexed) certificate by A. B., a minister (or, priest) of the (Presbyterian) church, was proved to me on this — day of —, 1—, by the oath of I. J., a person known to me, and who saw the said certificate executed.

In witness, etc. (as above.)

(Signature, etc., as above.)

1. Every such certificate (form No. 804), signed by a magistrate, if presented to the clerk of the city or town where the marriage was solemnized, or to the clerk of the city or town where either of the parties reside, within six months after such marriage, shall be filed by such clerk, and shall be entered in a book to be provided by him, in the alphabetical order of the names of both the parties, and in the order of time in which

such certificate shall be filed. (N. Y. Rev. Stat. 140, § 14.)

Every such certificate signed by a minister, may also be filed and recorded in like manner, if there be indorsed thereon or annexed thereto, a certificate of any magistrate residing in the same county with such clerk, setting forth, etc. (as in above form.) (Id. 141, § 15.)

See, also, note 1 to form No. 804.

CHAPTER XXVIII.

Forms of Mortgages of Real and Personal Property.

TITLE I.

GENERAL FORMS OF MORTGAGE.

- No. 808. Mortgage of real estate with power of sale, covenant to insure and to pay taxes, etc., and interest, etc., clause.
- 809. Another form of mortgage of real estate containing power of sale, covenant to insure and interest clause.
- 810. Mortgage of real estate to indemnify a surety.
- 811. Satisfaction of mortgage of real property by mortgagee or his assignee.
- 812. Extension of time of payment of bond and mortgage
- 813. Mortgage of personal property.
- 814. Statement of interest of mortgagee in property claimed by him under chattel mortgage.
- 815. Mortgage of vessel.
- 816. Notice of sale on default of payment of chattel mortgage.
- 817. Satisfaction of chattel mortgage by mortgagee or assignee.

No. 808.

Mortgage, with power of sale, covenant to insure and to pay taxes, etc., and interest, etc., clause.

This indenture, made the — day of —, in the year of our Lord 1—, between A. B., of (the city) of —, in the county of —, and State of — (and M. B., his wife), party (or, parties) of the first part, and C. D., of, etc. [or, the (name of corporation) a — corporation of the State of —, located and doing business in the (said city) of —], party of the second part, witnesseth: That the said party (or, parties) of the first part, for and in consideration of the sum of — dollars, money of account of the United States, to him (or, them) in hand paid by the said party of the

second part, the receipt whereof is hereby confessed and acknowledged,¹ hath (or, have) granted, bargained, sold, released, aliened and confirmed, and by these presents doth (or, do) grant, bargain, sell, release, alien and confirm,² unto the said party of the second part, and to (his) heirs (or, its successors) and assigns (forever),³ all that certain piece or parcel of land (with the buildings thereon), situate, lying and being in the (said city) of —, and bounded and described as follows: Beginning at, etc. (insert description) (being the same premises this day conveyed, etc.), together with all and singular the hereditaments thereunto in any wise belonging, and the reversion and reversions, remainder and remainders rents, issues and profits thereof, to have and to hold the said premises hereby released and confirmed, with the appurtenances unto the said party of the second part, (his) heirs (or, its successors) and assigns forever (*). Provided, always, and these presents are upon this express condition that if the said A. B., his heirs, executors and administrators, do and shall well and truly pay, or cause to be paid, unto the said party of the second part, (his) certain attorney or attorneys, heirs, executors, administrators (or, its successors) or assigns, the sum of — dollars, in the manner particularly specified in the condition of a certain bond or obligation, bearing even date herewith, executed by the said A. B. to the said party of the second part, together with all sums paid for taxes, water rents, assessments or premiums of insurance, with interest thereon, that then, and from thenceforth, these presents and everything herein contained shall cease and be void, anything herein contained to the contrary in any wise notwithstanding. (And the said A. B. doth covenant and agree to pay unto the said party of the second part, (his) executors, administrators (or, its successors) or assigns, the said sum of money and interest, as above mentioned and expressed in the condition of the said bond.)⁴

And the said A. B. doth further covenant for himself, his executors, administrators and assigns, that (he) will, during all the time, until the said money secured by these presents shall be fully paid and satisfied, keep the buildings erected or hereafter to be erected, on the said lot of land, insured in and by some solvent, incorporated and to be approved of by said

party of the second part, insurance company of good standing, against loss or damage by fire, in the sum of at least — dollars, and will assign and deliver the policy or policies of such insurance and the receipts or certificates of renewal thereof, to the said party of the second part, his executors, administrators or assigns, so and in such manner and form that they shall at all times, until the full payment of the said moneys, have and hold the said policy or policies, as a collateral and further security for the payment of all moneys due or to become due under this mortgage or the said bond. And in default of so doing, that the said party of the second part, his executors, administrators (or, its successors) or assigns may make such insurance from year to year, in a sum not exceeding — dollars, for the purposes aforesaid, and pay the premium or premiums therefor; which premium or premiums then paid and the legal interest thereon from the time of such payment, the said A. B., etc., covenants, as aforesaid, to pay to the said party of the second part, his executors, administrators or assigns, on demand, and that the same shall be deemed to be secured by these presents, and shall be collectible thereon and thereby in like manner as the said monies mentioned in the said bond or obligation.

And the said A. B. further covenants for himself, his heirs, executors, administrators and assigns, that he will during all the time until all the said moneys secured by these presents shall be fully paid and satisfied, pay and discharge, immediately after they shall be or become due or payable, all taxes, water rents and assessments which may be levied, laid or assessed upon the above described premises, or any part thereof, and in case the said party of the first part, his heirs, executors, administrators or assigns, shall fail or neglect to pay all such taxes, assessments and water rents, or either of them, on said premises, or any part thereof, within (thirty days) after the same shall be or become due or payable, then the said party of the second part, his executors, administrators or assigns, may pay the same, and the sum so paid, with interest thereon from the time of such payment, the said A. B., for himself and his heirs, executors, administrators and assigns, covenants to pay to the said party of the second part (his), ex-

ecutors, administrators (or, its successors), or assigns on demand, and that the same shall be and be deemed to be secured by these presents, and shall be collectible thereon and thereby, in like manner as the said moneys mentioned in the said bond or obligation.

And the said A. B., party of the first part, further covenants and agrees, that in case any installment of principal, or any part thereof, or any interest moneys, or any part thereof, or any premium or premiums of insurance, or any taxes, water rents or assessments on said premises hereby secured to be paid, or any or either one of them, shall remain due or unpaid by the said A. B., party of the first part, his heirs, executors, administrators or assigns, for the space of (thirty days) after the same shall be due and payable, that then and in that case the whole principal sum hereby secured to be paid, together with all interest thereon, and all sums paid by said party of the second part, for premium or premiums of insurance, taxes, water rents or assessments on said premises, together with interest thereon shall (at the option of the said party of the second part, (his) executors, administrators (or, its successors) or assigns), be and become due and payable forthwith, anything herein contained to the contrary notwithstanding.

And if default shall be made in the payment of the said principal sum of money above mentioned, or the interest that may grow due thereon, or any part of either, or in payment of the premiums of insurance and in keeping the policies and receipts, or certificates of such insurance assigned and delivered over, or in payment of taxes, water rents or assessments on said premises, or either of them; that then and from thenceforth it shall be lawful for the said party of the second part, (his) executors, administrators (or, successors) and assigns (at their option), to enter into and upon all and singular the premises hereby granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said party (or, parties) of the first part, his (or, their) heirs, executors, administrators and assigns therein, by public auction, according to the act in such case made and provided (and as the attorney of the said party (or,

parties) of the first part for that purpose by these presents duly authorized, constituted and appointed, to make and deliver to the purchaser or purchasers thereof, a good and sufficient deed or deeds of conveyance in law for the same, in fee simple,⁵ and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with all premiums of insurance, taxes, assessments or water rents on said premises, which have been paid by the said party of the second part, (his) executors, administrators (or, its successors) or assigns, together with interest thereon and the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase money (if any there shall be), when demanded unto the said party (or, parties) of the first part, his (or, their) executors, administrators or assigns, which sale so to be made shall forever be a perpetual bar, both in law and equity, against the said party (or, parties) of the first part, his (or, their) heirs, executors, administrators and assigns, and against all other persons claiming or to claim the premises, or any part thereof, by, from or under them, or any of them.

In witness, etc. (as in form No. 574).

In presence of
E. F.

A. B. [L. S.]
M. B. [L. S.]

(Certificate of acknowledgment or proof by mortgagors, as in forms Nos. 6, etc.)

1. The expressed consideration may always be inquired into, and the only effect of the clause acknowledging a consideration paid is to estop the mortgagor from denying that there was any consideration. For every other purpose it may be explained, varied or contradicted by parol. It is not necessary that it be shown to have been paid, if the deed recite that it was paid. Its extent or amount may be questioned, and another or different one be proved, and fraud or illegality may be shown.

Neither the grantee nor grantor is estopped from proving that there were other considerations than the one expressed, or from showing how it was to be paid. (*Stackpole v. Robbins*, 47 Barb. 212, 219; *Winans v. Peebles*, 31 Barb. 371, 380; reversed, 32 N. Y. 423, on other grounds; *Webster v. Van Steenberg*, 46 Barb. 211, 214; *Wheeler v. Billings*, 38 N. Y. 263; *Miller v. McKenzie*, 95 id. 575; *Merriam v. Harson*, 2 Barb. Ch. 233, 267; *Frink v. Green*, 5 Barb. 455.) *Fuller v. Artman* (69 Hun, 546).

2. By section 136 of article 4 of title 2 of chapter 1 of part 2 of the New York Revised Statutes, the mode of conveying lands by feoffment with livery of seisin is abolished. By section 137 of same article every grant in fee of a freehold estate must be subscribed and sealed by the person from whom the estate or interest conveyed is intended to pass, or his lawful agent; if not duly acknowledged, previous to its delivery, according to the provisions of the third chapter of the same act, its execution and delivery must be attested by at least one witness; or, if not so attested, it shall not take effect as against a purchaser or incumbrancer, until so acknowledged. By section 138 of same article a grant takes effect, so as to vest the estate or interest intended to be conveyed, only from its delivery; and all the rules of law in force in respect to the delivery of deeds are made applicable to grants thereafter to be executed. By section 142 of same article deeds of bargain and sale, and of lease and release, may continue to be used, and are to be deemed grants; and as such, are to be subject to all the provisions of that chapter concerning grants. (1 N. Y. R. S. 738, 739; 7th ed. 2194, 2195.)

3. Or if the estate of the mortgagor is less than a fee simple, insert here description of the lesser estate, e. g., for and during the life of the said A. B. By section 143, however, of article 4, referred to in last note, no greater estate or interest shall be construed to pass by any grant or conveyance thereafter executed than the grantor himself possessed at the delivery of the deed, or could then lawfully convey, except that every grant shall be conclusive as against the grantor and his heirs claiming from him by descent. And

by section 145, id., a conveyance made by a tenant for life or years of a greater estate than he possessed or could lawfully convey does not work a forfeiture of his estate, but shall pass to the grantee all the title, estate or interest which said tenant could lawfully convey. (1 N. Y. R. S. 739; 7th ed. 2195.)

4. By section 139 of same article referred to in last note, no mortgage is to be construed as implying a covenant for the payment of the sum intended to be secured; and where there shall be no express covenant for such payment contained in the mortgage, and no bond or other separate instrument to secure such payment shall have been given, the remedies of the mortgagee shall be confined to the lands mentioned in the mortgage. (1 N. Y. R. S. 738; 7th ed. 2195.) As the above mortgage is intended to be accompanied by the bond of the mortgagor, this express covenant to pay is rendered unnecessary, although it is sometimes inserted.

Where a mortgage is taken for the security of a pre-existing indebtedness, without any intention of discharging the original debtor from personal responsibility upon his former security, his liability upon that security will remain, notwithstanding the debt is further secured by such mortgage. But if the original indebtedness is intended to be discharged, and a mere mortgage is taken to secure the amount of the debt, without any express covenant to pay the same, and no bond or separate instrument is given to secure such payment, the mortgagee has no remedy upon any implied agreement of the mortgagor to pay the amount secured by the mortgage, but he must resort to the land alone, or to

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the proceeds thereof for payment. (*Howet v. Fisher*, 2 Barb. Ch. R. 559.) See, also, *Mack v. Austin* (29 Hun, 534; *aff'd*, S. C., 95 N. Y. 513; and in connection therewith chapter 381, p. 465, Laws of N. Y., 1884); *Gaylord v. Knapp* (15 Hun, 87); *Caryl v. Williams* (7 Lans. 416).

The assignment of a mortgage given without bond, or other instrument to secure the payment of the mortgage debt, and containing no express covenant to pay, transfers to the assignee all the mortgagee's claim under the mortgage, viz.: his remedy against the land. (*Severance v. Griffith*, 2 Lans. 38.)

5 It is provided by the New York Code of Civil Procedure as follows:

§ 2398. The affidavits, specified in the last two sections (viz.: of sale, of posting, serving, etc., notices) may be filed in the office for recording deeds and mortgages, in the county where the sale took place. They must be recorded at length by the officer with whom they are filed, in the proper book for recording mortgages. The original affidavits, so filed, the record thereof, and a certified copy of the record, are presumptive evidence of the matters of fact therein stated, with respect to any property sold, which is situated in that county. Where the property sold is situated in two or more counties, a copy of the affidavits, certified by the officer with whom the originals are filed, may be filed and recorded in each other county, wherein any of the property is situated. Thereupon the copy and the record thereof have the like effect, with respect to the

property in that county, as if the originals were duly filed and recorded therein.

§ 2399. A clerk or a register, who records any affidavits, or a certified copy thereof, filed with him, must make a note, upon the margin of the record of the mortgage, in his office, referring to the book and page, or the copy thereof, where the affidavits are recorded.

§ 2400. The purchaser of the mortgaged premises, upon a sale conducted as prescribed in this title, obtains title thereto, against all persons bound by the sale, without the execution of a conveyance. Except where he is the person authorized to execute the power of sale, such a purchaser also obtains title in like manner, upon payment of the purchase money, and compliance with the other terms of sale, if any, without the filing and recording of the affidavits, as prescribed in the last section but one. But he is not bound to pay the purchase money, until the affidavits, specified in that section, with respect to the property purchased by him, are filed, or delivered or tendered to him for filing.

It was held under 2 R. S. 547, § 14, for which section 2400 of the Code of Civil Procedure is a substitute, that when the property is purchased by the owner of the mortgage, the affidavits are not conclusive as to the facts; and where the terms of sale are not stated therein, oral evidence is admissible to prove them. (*Story v. Hamilton*, 86 N. Y. 428, *aff'd* S. C., 20 Hun, 133.)

No. 809.

Another form of mortgage, containing power of sale, covenant to insure and interest clauses.

As in last form to (*), and from thence as follows: This grant is intended as a security for the payment of the sum of — dollars, with interest thereon at the rate of — per centum per annum (in — years from the date of these presents), according to the condition of a bond this day executed and delivered by the said A. B. to the said party of the second part; and this conveyance shall be void if such payment shall be made as herein specified. And in case default shall be made in the payment of the principal sum hereby intended to be secured, or in the payment of the interest thereof, or any part of such principal or interest, as above provided, it shall be lawful for the party of the second part, (his) executors, administrators (or, its successors) or assigns, at any time thereafter, to sell the premises hereby granted, or any part thereof, in the manner prescribed by law; and out of the monies arising from such sale, to retain the amount then due for principal and interest, together with the costs and charges of making such sale, and the overplus, if any there be, shall be paid by the party making sale, on demand to the said (A. B.), his heirs or assigns.

And it is expressly hereby agreed, that in case any installment of principal, or any part thereof, or any interest monies, or any part thereof, hereby secured to be paid, shall remain due and unpaid by said party (or, parties) of the first part, for the space of (thirty) days after the same shall, by the terms hereof, become due and payable, that then and in that case the whole principal sum hereby secured to be paid, together with all arrearages of interest thereon, shall, at the option of said party of the second part, (his) executors, administrators, (or, its successors) or assigns, become due and payable forthwith, anything herein contained to the contrary notwithstanding.

And it is also agreed by and between the parties to these presents, that the said party (or, parties) of the first part shall and will keep the buildings erected and to be erected upon the

lands above conveyed insured against loss or damage by fire, by insurers, and in an amount approved by the said party of the second part, not less than — dollars, and assign the policy and certificates thereof to the said party of the second part; and in default thereof it shall be lawful for the said party of the second part to effect such insurance, as mortgagee or otherwise, and the premium or premiums paid for effecting and continuing the same shall be a lien on the said mortgaged premises, added to the amount secured by these presents, and payable on demand, with interest at the rate of (six) per centum per annum, and shall be collectible in the same manner, at the same time and upon the same conditions, as the interest hereinbefore mentioned.

In witness, etc. (as in form No. 574).¹

A. B. [L. S.]

C. B. [L. S.]

Sealed and delivered in presence of

E. F.

(Certificate of acknowledgment or proof, as in forms Nos. 6, etc.)

1. See notes to last form, No. 808.

No. 810.

Mortgage to indemnify a surety.

This indenture, made this — day of —, in the year 1 —, between I. M., of, etc., and P. M., his wife, of the one part, and F. S., of, etc., of the other part: Whereas, the said F. S., at the special instance and request of the said I. M., hath become bound together with the said I. M., unto A. B., of, etc., by a bond or obligation bearing even date with these presents, in the penal sum of — dollars, conditioned for the payment of — dollars, etc. (inserting condition), which said moneys being the proper debt of the said I. M. and the said F. S., in the said recited bond, being only as security for the said I. M., and at his request aforesaid, he, the said I. M. (and P. M.), to counter-secure him, the said F. S., against the same, hath (or, have) agreed to convey and grant the (dwelling house and lot of ground) hereinafter mentioned, to him, the said F. S., his heirs and assigns forever, in manner and form hereinafter expressed:

Now, this indenture witnesseth : That the said I. M. and P. M., for and in consideration of the premises, and also for and in consideration of the sum of one dollar, to him (or, them) in hand paid by the said F. S., at and before the ensembling and delivery hereof, the receipt whereof is hereby acknowledged, he, the said I. M., hath (or, they, the said I. M. and P. M., have) granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents doth (or, do) grant, bargain, sell, remise, release, convey and confirm, unto the said F. S., and to his heirs and assigns, forever, all that, etc. (describe premises), and all the hereditaments and appurtenances to the same of right in any way belonging or appertaining, and the reversion and reversions, remainder and remainders thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever of him (or, of them), the said I. M. (and P. M.), of, in and to the same or any part or parcel thereof, to have and to hold the said (dwelling house, lot of ground and premises), with the appurtenances, unto the said F. S., his heirs and assigns, to the only proper use and behoof of the said F. S., his heirs and assigns forever.

Provided always, and this present grant is upon this condition, that if the said I. M., his heirs, executors or administrators, shall well and truly pay, or cause to be paid unto the above named A. B., the said sum of — dollars, with the interest on said sum, etc., according to the condition, and in full discharge and satisfaction of the before recited obligation, and also from time to time, and at all times hereafter, shall and do well and sufficiently save harmless, and keep indemnified the aforesaid F. S., his heirs, executors and administrators, and every of them, and their and each and every of their goods and chattels, lands and tenements, of and from all and all manner of actions, suits, troubles, charges, judgments, executions, damages and demands whatsoever, that shall, or may at any time hereafter accrue, or happen unto, or arise or be brought, or prosecuted against the said F. S., his heirs, executors or administrators, and any or either of them, upon the before recited obligation, or of, for or by reason of his, the said F. S., becoming bound in the said bond, that then

and from thenceforth, this present indenture, and every article, covenant, clause and condition in the same contained, and the estate hereby granted shall cease, determine and be utterly void, and of none effect, anything herein contained to the contrary thereof in any wise notwithstanding.

And the said I. M. for himself and his heirs, executors and administrators and every of them doth covenant, promise, grant and agree to and with the said F. S., his heirs, executors, administrators and assigns, and every of them, by these presents, that he, the said I. M., his heirs, executors, administrators and assigns, and every of them, shall and will well and truly pay, or cause to be paid unto the said A. B. the aforesaid sum of — dollars, with the interest thereof, on, etc., according to the form and effect of the condition, and in full discharge and satisfaction of the above recited bond or obligation. And also that he, the said I. M., his heirs, executors and administrators, and each and every of them, against the said A. B., his executors and administrators and every of them, and all other persons, of and from the before recited bond or obligation so entered into as aforesaid, and of and from all and all manner of actions, suits, troubles, charges, judgments, executions, damages and demands whatsoever, that shall or may at any time hereafter accrue, or happen unto, or arise, or be brought or be prosecuted against him, the said F. S., his heirs, executors or administrators, and any or either of them, or against their, or either of their goods and chattels, lands and tenements, for or by reason of the said F. S. becoming bound as aforesaid, according to the form and effect of the proviso aforesaid.

And the said I. M., for himself, his heirs, executors and administrators, doth further covenant, promise, grant and agree, to and with the said F. S., his heirs and assigns, and to and with every of them by these presents, that the said I. M., at the time of the ensealing and delivery of these presents, is the true and lawful owner and proprietor of the said dwelling house, and lot of ground and premises before mentioned, with the appurtenances and every part and parcel thereof, and is seized of a good, sure, perfect, absolute and

indefeasible estate of inheritance in fee simple, without any manner of condition, reservation, cause or thing whatsoever, to determine, alter, change or defeat the same; and that he, the said I. M., hath in himself good right, full power and lawful authority to grant, bargain, sell, alien, remise, release, convey and confirm the same, and every part and parcel thereof, unto him, the said F. S., his heirs and assigns, in manner and form aforesaid.

In witness whereof, etc. (as in form No. 574).¹

I. M. [L. S.]
[P. M. (L. S.)]

Sealed and delivered in presence of

E. F.

(Certificate of acknowledgment or proof, as in forms Nos. 6, etc.)

1. See notes to form No. 808.

No. 811.

Satisfaction of mortgage by mortgagee or his assignee.

(N. Y. Rev. Stat., part 2, chap. 3, § 28.)

I, A. B., of the (town) of —, in the county of — and State of (New York), do hereby certify that a certain (*) mortgage, bearing date the — day of —, in the year 1—, made and executed by C. D. (and F. D., his wife) to me, A. B. (or, made and executed by C. D. to G. H., and by said G. H. duly assigned to me), and recorded in the office of the clerk of the county of —, in Book of Deeds, No. —, on page —, on the — day of —, in the year 1— (and the bond accompanying the same), is (or, are) paid, satisfied and discharged.¹

Dated —, 1—

A. B.

In presence of

E. F.

(Certificate of acknowledgment by mortgagee, or proof by subscribing witness, as in forms Nos. 89, etc.)

1. Any mortgage that has been charged upon the record thereof, by registered or recorded, or that may the officer in whose custody it shall hereafter be recorded, shall be dis- be, whenever there shall be presented

to him, a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged or proved, and certified, as hereinbefore prescribed, to entitle conveyances to be recorded, specifying that such mortgage has been paid, or otherwise satisfied and discharged. (1 N. Y. R. S. 761, § 28; 7th ed. 2220.)

Every such certificate, and the proof or acknowledgment thereof, shall be recorded at full length: and a reference shall be made to the book and page, containing such record, in the minute of the discharge of such mortgage, made by the officer upon the record thereof. (Id., § 29; 7th ed. 2221.)

The statute (§ 28, *supra*) does not intend that all the mortgagees, or their personal representatives, must join in the execution of the satisfaction piece, but that the same must be executed by one or more of the mortgagees, whose satisfaction is sufficient to discharge the mortgage from all claim of each and every of the mortgagees thereupon. (People v. Keyser, 23 N. Y. 226, 231.)

Section 36 of article 3 of title 3 of chapter 8 of the New York Revised Statutes provides that whenever any mortgage given to the people of that State shall be paid, the treasurer's receipt, countersigned by the com-

troller, setting forth that the whole sum due on any such mortgage has been paid, shall be a sufficient discharge of such mortgage; and the secretary of state or county clerk, in whose office any such mortgage shall have been registered, shall enter a minute of such payment on the margin of the registry of such mortgage. (1 N. Y. R. S. 175; 7th ed. 471.)

Chapter 698 of Laws of New York of 1868 provides that it shall and may be lawful for the comptroller, upon satisfactory proof that any moneys loaned by commissioners for loaning the United States deposit fund and secured by mortgage have been fully paid to either of the commissioners authorized to receive the same, in case the mortgage for any reason remains uncanceled and undischarged of record, to authorize and empower the proper commissioners of the said fund to cancel and discharge the said mortgage in the manner prescribed by law; and the said commissioners shall in pursuance of the order and direction of the comptroller, cancel and discharge such mortgage. (Laws of 1868, p. 1545; R. S., 7th ed., 532.)

See, for further provisions as to release of mortgages by such commissioners upon payment thereof, § 28 of chap. 150 of Laws of N. Y. of 1837 (Laws 1837, p. 128; R. S., 7th ed., 516).

See, as to effect of discharge, Bogert v. Bliss (13 Misc. 72).

No. 812.

Extension of time of payment of bond and mortgage.

The time for the payment of the bond and mortgage dated —, 1—, made and executed by the undersigned J. M. P. and wife, to the undersigned F. L., to secure the payment of the sum of — dollars, with interest thereupon from the date thereof, at the rate of — per centum per annum, and which said mortgage was recorded in the — county clerk's office on

the — day of —, 1 —, at — o'clock in the — noon, in book No. —, of Mortgages, at page —, is hereby (further) extended for the term of — years from the — day of —, 1 —, upon the same terms and conditions mentioned in said bond and mortgage (except that the rate of interest payable upon said bond and mortgage from and after the — day of —, 1 —, shall be — per centum per annum.)

In witness whereof we have hereunto set our hands and seals this — day of —, 1 —.

In presence of (Signatures and seals.)

A. C.

(Acknowledgment or proof, as in forms Nos. 6, etc.)

No. 813.

Mortgage on personal property.

(Laws of N. Y. of 1833, chap. 279, as amended by chap. 418 of Laws of 1879.)

To all to whom these presents shall come, greeting: Know ye, that A. B. of the (city) of —, in the county of —, and State of —, of the first part, for securing the payment of the sum of money and interest thereupon hereinafter mentioned, and in consideration of the sum of (one dollar) to him in hand paid, at or before the ensealing and delivery of these presents, by C. D., of, etc., of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain and sell, unto the said party of the second part, all the following described goods and chattels, viz.: (describing generally property mortgaged; *e. g.*, the household goods and furniture now being in the house of the said A. B., at —) and all other goods and chattels whatsoever, mentioned and expressed in the schedule hereunto annexed, now remaining and being at, etc., (describing place) (or, insert description of property after "viz.:" without reference to schedule.)

To have and to hold all and singular the goods and chattels above bargained and sold, or intended so to be, unto the said party of the second part, (his) executors, administrators

and assigns forever. And the said party of the first part for (himself and his) heirs, executors and administrators, all and singular the said goods and chattels above bargained and sold, unto the said party of the second part, (his) executors, administrators and assigns, against the said party of the first part, and against all and every person and persons whomsoever shall and will warrant, and by these presents forever defend.

Upon condition, that if the said party of the first part shall and do well and truly pay, or cause to be paid, unto the said party of the second part, (his) executors, administrators or assigns, the sum of — dollars, with lawful interest thereupon at the rate of (six) per centum per annum from the date of these presents, on or before the — day of —, 1—¹ (or, next), which said sum and interest the said party of the first part hereby covenants and agrees to pay as above provided), then these presents, and everything herein contained, shall cease and be void. And the said (party) of the first part, for (himself and his) executors, administrators and assigns, (doth) covenant and agree to and with the said (party) of the second part, (his) executors, administrators and assigns, that in case default shall be made in payment of the said sum above mentioned, or, in case the said C. D. shall at any time deem himself unsafe,² it shall and may be lawful for, and the said (party) of the first part (doth) hereby authorize and empower the said (party) of the second part, (his) executors, administrators and assigns, with the aid and assistance of any person or persons, to enter and come into and upon the dwelling house and premises of the said (party) of the second part, and in such other place or places as the said goods and chattels are, or may be held or placed, and take and carry away the said goods and chattels, and to sell and dispose of the same for the best price they can obtain; and out of the money to retain and pay the said sum above mentioned, with the interest and all expenses thereon, rendering the overplus (if any), unto the said (party) of the first part, (his) executors, administrators and assigns, and until default be made in the payment of the aforesaid sum of money, or until the said A. B. shall consider himself unsafe as aforesaid,

the said (party) of the first part to remain and continue in quiet and peaceable possession of the said goods and chattels, and the full and free enjoyment of the same, unless the said (party) of the second part, (his) executors, administrators or assigns, shall sooner choose to demand the same (or, to take possession of the same as above provided, he deeming himself unsafe), and until such demand be made (or, possession taken) the possession of the said party of the first part shall be deemed the possession of an agent or servant, for the sole benefit and advantage of his principal, the said party of the second part.

In witness whereof, etc. (as in form No. 574).³

A. B. [L. S.]⁴

Sealed and delivered in the presence of

E. F.

(Certificate of acknowledgment by mortgagor, or of proof by subscribing witness, as in forms Nos. 6, etc.)⁴

(Annex schedule of property mortgaged, headed: "Schedule referred to in annexed mortgage," dated —, 1—, and signed by mortgagor.)⁵

1. A chattel mortgage which does not specify a time for payment is due immediately, and no demand for payment is necessary to sustain an action upon it. (*Dikeman v. Puckhafer*, 1 Abb. Pr. N. S. 32; S. C., 1 Daly, 489.)

2. This provision is for the benefit of the mortgagee and authorizes him to take possession when, in his judgment, he deems it best for the safety of his demand so to do, and no proof is required to show that he considered himself unsafe, as the legal presumption would be that such was the fact, when possession is taken before the mortgage is due. (*Smith v. Post*, 1 Hun, 516.)

See, also, *Allen v. Vose* (34 Hun, 57), in which case the right of a mortgagee to take possession of the mortgaged property under such a clause

is considered and the cases bearing thereon collated, and see *Hyer v. Sutton* (59 Hun, 40).

3. A chattel mortgage signed and sealed by certain individuals representing themselves as the president and directors of a corporation, purporting, by its terms, to be the act of the company through its president and directors, under power and authority given to those officers by the stockholders, at a meeting previously held, where a resolution authorizing its execution for the purpose of borrowing the moneys secured thereby had been adopted, must be considered, *it seems* a valid contract, though not bearing the corporate seal of the company. (*Leinkauf v. Calman*, 110 N. Y. 50.)

Section 1 of chapter 279 of Laws of New York of 1833 provides that every mortgage or conveyance in-

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tended to operate as a mortgage, of goods and chattels, thereafter made, which shall not be accompanied by an immediate delivery, and be followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage, or a true copy thereof, shall be filed as directed in the succeeding section of that act. (Laws of New York of 1833, p. 402; R. S., 7th ed., 2249.)

Section 2 of the same chapter provides that the instruments mentioned in the preceding section shall be filed in the several towns and cities of the State where the mortgagor therein, if a resident of the State, shall reside at the time of the execution thereof, and if not a resident, then in the city or town where the property so mortgaged shall be at the time of the execution of such instrument. In the city of New York, such instrument shall be filed in the office of the register of said city. In the several cities of the State, other than the city of New York, and in the several towns of the State in which a county clerk's office is kept, in such office; and in each of the other towns in the State, in the office of the town clerk thereof; and such register and clerks are thereby required to file all such instruments aforesaid presented to them respectively for that purpose, and to indorse thereon the time of receiving the same, and to deposit the same in their respective offices, to be kept there for the inspection of all persons interested. (Id.)

Section 3 of the same chapter, as amended by chapter 418 of Laws of 1879, provides that every mortgage filed in pursuance of that act shall

cease to be valid as against the creditors of the person making the same, or against subsequent purchasers or mortgagees in good faith, after the expiration of one year from the filing thereof, unless, within thirty days next preceding the expiration of each and every term of one year after the filing of said mortgage, a true copy of such mortgage, together with a statement exhibiting the interest of the mortgagee in the property thereby claimed by him by virtue thereof, shall be again filed in the office of the clerk or register aforesaid of the town or city where the mortgagor shall then reside, if the mortgagor shall then be a resident of the State, and if not such resident, then in the office of the clerk or register of the town or city where the property so mortgaged was at the time of the execution of such mortgage. (Laws of N. Y. 1879, p. 470; R. S., 7th ed., 2249.)

The general creditors of a mortgagor of chattels have no right to assail the mortgage as invalid until they have secured a lien thereon by a levy under judgment and execution, or in some way have acquired a legal or equitable interest therein. (*Sullivan v. Miller*, 106 N. Y. 635, 641.)

Failure to duly file a chattel mortgage does not render it void, so as to enable the mortgagor's assignee for benefit of creditors to maintain an action to set it aside under Laws of 1858, chapter 314. (*Crisfield v. Bogardus*, 18 Abb. N. C. 334.)

See, further, *Preston v. Southwick* (42 Hun, 291); *Button v. Rathbone, Sard & Co.* (43 id. 147); *Steward v. Cole* (id. 164); *Osborn v. Alexander* (40 id. 323); *Nixon v. Stanley* (33 Hun, 247); *Nichols v. Mase* (94 N. Y. 160), among other recent cases

as to effect upon rights of creditors and others of failure to file or refile the mortgage.

A chattel mortgage given for a pre-existing indebtedness, although in all respects good and valid as between the parties, will not constitute the mortgagee a purchaser or an incumbrancer in good faith within the statute, so as to protect him against a prior unfiled mortgage. (*Zimmer v. Wheeler*, 2 N. Y. State Rep. 325; *Jones v. Graham*, 77 N. Y. 628.)

Chattel mortgages upon property in the town of Flatbush, Kings county, should be filed in the office of the clerk of that town, and not in the office of the register of Kings county, notwithstanding chapter 83 of Laws of 1852, requiring the register of Kings county to do like acts required to be done by the register of the city of New York. (*Martin v. Rothchild*, 42 Hun. 410.)

One F., a resident of Pennsylvania, executed an instrument to plaintiffs in that State, in form an absolute bill of sale, but in fact given as a chattel mortgage on a canal boat owned by him, then lying in the Erie canal in the town of G. F., in the State of New York. An agent of the mortgagee filed a copy of the mortgage on the next day in the town clerk's office of that town, and went on board the boat and assumed possession thereof. Defendant, however, had previously, on the same day, as sheriff, levied upon the boat by virtue of an attachment against F., and subsequently sold it on execution. The mortgagee and attaching creditors were also residents of Pennsylvania. In an action for the conversion of the boat, *held*, that both under the provisions of the Revised Statutes of New York, relating to chattel mortgages, and the act in re-

lation to liens on canal boats (§§ 1 and 2, chap. 412, Laws of N. Y. of 1864), the instrument was void, and plaintiffs were not entitled to recover. (*Keller v. Paine*, 107 N. Y. 84, rev'g S. C., 34 Hun. 167.)

And that this was so, although the plaintiffs would have been entitled to recover under the laws of Pennsylvania. The general rule that the voluntary transfer of personal property, wheresoever situated, is to be governed by the law of the owner's domicile, always yields when the law and policy of the State where the property is actually located have provided a different rule of transfer from that of the State where the owner lives. (*Id.*)

See, also, chapter 412 of Laws of New York of 1864, above mentioned, amending chapter 247 of 1858 of said laws, further as to chattel mortgages upon boats navigating the canals of that State. The description of such boat contained in the mortgage should be as follows: the canal boat (*or*, steam tug, scow, etc.) called the (stating name) together with the appurtenances belonging thereto and used in navigating such craft.

Section 4 of chapter 279 of Laws of New York of 1833 provides that a copy of such original instrument (see sections 1, 2, and 3, of that act, cited in notes to this form), or of any copy thereof, so filed as aforesaid, including any statement made in pursuance of that act, certified by the clerk or register in whose office the same shall be filed, shall be received in evidence, but only of the fact that such instrument or copy, and statement, was received and filed, according to the indorsement of the clerk or register thereon, and of no other fact; and in all cases the original indorsement by the clerk or register,

made in pursuance of that act upon such instrument or copy, shall be received in evidence only of the facts stated in such indorsement. (Laws of New York of 1833, p. 402; R. S., 7th ed., 2250.)

4. The acknowledgment or proof, although not required by the statute, is important in case of the necessity of proof of the original instrument. Section 937 of the New York Code of Civil Procedure provides that any instrument, except a promissory note, a bill of exchange, or a last will, may be acknowledged, or proved, and certified, in the manner prescribed by law for taking and certifying the acknowledgment or proof of a conveyance of real property; and thereupon it is evidence as if it was a conveyance of real property.

See as to effect of acknowledgment of conveyances of real property in New York State, forms Nos. 89, etc., and notes thereto.

5. Where the schedule is in conflict with the mortgage, the latter must control, as the annexing of the schedule

neither limits nor enlarges the generality of the description in the mortgage, but is annexed for greater certainty and exactness in the description of the property, so that it may be easily identified. (Matthews v. Sniffen, 10 Daly, 200.)

A mortgage upon the machinery and effects in a sugar refinery; *held*, not to include the stock of sugars and syrup therein, since the mortgagor would have been unable to continue business if they had been included, and such construction of the instrument would not be favored. (Thurber v. Minturn, 18 N. Y. Week. Dig. 25.)

See, also, Stevenson Brewing Co. v. Iba (12 Misc. 329); Van Vechten v. McKane (69 Hun, 510); Rochester Distilling Co. v. Rasey (142 N. Y. 570); Beebe v. Richmond Power Co. (13 Misc. 737); N. Y. Security Co. v. Saratoga Gas Co. (88 Hun, 569), and see the lien law, ch. 418 of Laws of New York of 1897, sections 90 to 98. By that chapter, chapter 279 of Laws of 1833 and chapter 418 of Laws of 1879 are repealed.

No. 814.

Statement of interest of mortgagee in property claimed by him under chattel mortgage.

(Laws of N. Y. of 1833, chap. 279, § 3, as amended by chap. 418 of Laws of 1879.)

I, C. D., the mortgagee named in the chattel mortgage of which a copy is hereto annexed, made by A. B., to me and dated —, 1—, do hereby make the following statement, pursuant to statute, of my interest in the property described in and hereby claimed by me by virtue of said mortgage at this date, to wit: The amount of — dollars and — cents is still (due and) unpaid upon said mortgage from said A. B. to me, which is the amount of my said interest in said property at this date.¹

Dated —, 1—.

A. B.

1. See as to this statement section 3 of Laws of 1879, cited in note 3 to form No. 813; also, Stockham v. Allard) 2 Hun, 67); Marsden v. Cor-

nell (62 N. Y. 215, aff'g S. C., 2 Hun, 449; 5 T. & C. 27); Jaqueth v. Merritt (29 Hun, 584); Osborn v. Alexander (40 id. 323); Newell v. Warner (44 N. Y. 244, rev'g S. C., 44 Barb. 258); Nixon v. Stanley (33 Hun, 247); Siedenbach v. Riley (111 N. Y. 560, 567); Tremaine v. Mortimer (128 id. 1).

The time prescribed by the statute for the filing of a copy of a chattel mortgage, in order to keep the security in force, relates to the first filing of the mortgage, and is limited to a period of thirty days previous to the expiration of the term of one year from such first filing. (Newell v. Warner, 44 Barb. 258.)

A filing before the commencement of the thirty days would be as nugatory as one after the expiration of that time. (Id.)

Where a mortgage is sought to be kept on foot through a number of years, there must be successive filings, annually, of the copies and statements, or the mortgage will cease to be valid as

against creditors and subsequent mortgagees and purchasers in good faith of the mortgagor. Though the language of the statute might be satisfied with the filing of one copy only in such a case, its obvious spirit, policy and meaning would not. (Id.) Reversed by same case (44 N. Y. 244) on this point, under the act of 1833, before the amendments of 1873 and 1879.

Every copy thus filed must be regarded as a new mortgage, and the statement must therefore be filed each year within thirty days of the expiration of a year from the filing of the last statement, in order to continue the lien of the mortgage. (Nitchie v. Townsend, 2 Sandf. 299.)

The filing of the statement is not an extension of credit, and will not prevent the mortgagee from insisting upon a forfeiture. (Dane v. Mallory, 6 Barb. 46.)

See, also, notes to form No. 813 and see chapter 418 of Laws of 1897, article 8, § 95.

No. 815.

Mortgage of vessel.

(Laws of U. S. of 1850.)

Know all men by these presents: That I (or, we), A. B., of, etc. (and E. F., of, etc.), am (or, are) held and firmly bound unto C. D., of, etc., in the sum of — dollars, lawful money of the United States of America, to be paid to the said C. D., his executors, administrators or assigns; for which payment well and truly to be made, I bind myself, my (or, we bind ourselves, our) heirs, executors and administrators (jointly and severally) firmly by these presents.

Dated at the (city) of —, in the State of —, this — day of —, in the year 1—.

Whereas, the said C. D. has this day lent and advanced unto the said A. B. (and E. F.) the sum of — dollars, on the body, tackle and appurtenances of the ship or vessel called the Snowbird, of the burden of — tons, or there-

abouts; the said A. B. (and E. F.) being the sole owner (or, owners) of the said ship or vessel called the Snowbird.

Now, the condition of this obligation is such, that if the said A. B. (and E. F.) shall pay or cause to be paid to the said C. D. the said sum of — dollars in three years from the date hereof, and interest thereon at the rate of (six) per centum per annum, payable semi-annually at that rate, until the said principal sum shall be wholly paid, then this obligation to be void, otherwise to be and remain in full force and virtue. And in consideration of and as security for said loan as aforesaid, the said ship or vessel is, by these presents, assigned, pledged, mortgaged, set over and conveyed to the said C. D., his heirs, executors, administrators and assigns, the certificate of enrollment of which vessel is as follows:

No. —.

In pursuance of chapter 1, title XLVIII, "Regulation of Commerce and Navigation," of the Revised Statutes of the United States, A. B., of the (city) of —, in the county of —, and State of —, by occupation a —, having taken and subscribed the oath required by law, and having sworn that he (or, she) [together with E. F., of the (city) of —, in the county of —, and State of —, by occupation a —, is (or, are) the only owner (or, owners in the following proportions, to wit: A. B., of the — part, and E. F., of the one — part) of the vessel called the (inserting name of vessel) of the port of — (inserting here the port to which she may belong), whereof E. F. is at present master, and is a citizen of the United States, and that the said vessel was built at —, in (stating time of building) and that I. J., (inserting name and office, if any, of the person by whom she shall have been surveyed or measured) having certified that the said vessel has — deck (or, decks) and — mast (or, masts) and that her length is — feet, her breadth — feet, her depth — feet, and that she measures — tons, and that she is a (ship) brigantine, scow, schooner, sloop, etc., (describing the particular kind of vessel) has — head and — gallery (or, has no gallery or head), and the said — having agreed to the description and measurement above

specified, and sufficient security having been given according to law, the said vessel has been duly registered at the port of —.

Given under my (or, our) hand (or, hands) and seal (or, seals) of office at the port of —, this — day of —, in the year one thousand eight hundred and — —.

(Signatures and seals.)

It being mutually understood and agreed, that in case the amount of said loan and interest, or any part thereof, according to the terms of these presents, shall remain due and unpaid to said C. D., his heirs, executors, administrators or assigns, after the expiration of said — years, the said C. D., his heirs, executors, administrators or assigns, may take possession of said ship or vessel and appurtenances, and sell the same at public auction, in order to satisfy the amount then due, without any proceedings in court or otherwise, for the purpose of authorizing such sale, and thereupon may execute and deliver a sufficient bill of sale to transfer completely to any purchaser or purchasers all title and property in and to the said ship or vessel and appurtenances of the said A. B. (and E. F.) as sole owner (or, owners) thereof, now belonging.

The said C. D. thereupon to account to the said A. B. (and E. F.), his (or, their) executors, administrators or assigns, for any surplus of such sale, after paying all charges and expenses.

And in case of such sale as aforesaid, the said A. B. (and E. F.), his (or, their) executors, administrators or assigns, shall, whenever thereto requested, make, execute and deliver to such purchaser or purchasers another bill of sale of said ship or vessel and appurtenances, in which the enrollment shall be recited as above, for the transferring completely to said purchaser or purchasers all the right, interest and claim of said A. B. (and E. F.), his (or, their) executors, administrators or assigns, as sole owner (or, owners) of said ship or vessel.

And in default of the prompt execution and delivery of such other bill of sale to such purchaser or purchasers by

the said A. B. (and E. F.) when thereto requested, the said C. D. is hereby constituted and appointed the legal attorney of the said A. B. (and E. F.), for the purpose of making, executing and delivering such bill of sale; and the said A. B. (and E. F.) hereby ratifies (or, ratify) and confirms (or, confirm) the act of the said C. D. as his (or, their) attorney for said purpose.

And it is hereby further agreed, that insurance shall be made at some office in the city of — on the said ship or vessel, for the security of the said C. D., to an amount not less than the sum loaned as aforesaid, and the said C. D. is hereby authorized to procure such insurance at the expense of the said A. B. (and E. F.), if not seasonably obtained by said A. B. (and E. F.).¹

A. B. [L. S.]
(E. F. [L. S].)

Signed, sealed and delivered in presence of

I. J.

(Certificate of acknowledgment by mortgagor or mortgagors, or of proof by subscribing witness, as in forms Nos. 6, etc.)

INDORSED.

A. B. (and E. F.)

to

C. D.

Mortgage on vessel.

Dated —, 1—.

Custom House.

Received for record the — day of —, 1—, at —
— M., recorded in Liber —, folio —.

C. F.,

Register of Sales and Transfers.

1. By section 4192 of the Revised Statutes of the United States, no bill of sale, mortgage, hypothecation, or conveyance of any vessel, or part of any vessel, of the United States, shall be valid against any other person than the grantor or mortgagor, his heirs and devisees, and persons having actual notice thereof, unless such bill of sale, mortgage, hypothecation,

cation or conveyance is recorded in the office of the collector of customs where such vessel is registered or enrolled. The lien by bottomry on any vessel, created during her voyage, by a loan of money or materials necessary to repair or enable her to prosecute a voyage, shall not, however, lose its priority, or be in any way affected by the provisions of this section.

Section 4193, *id.*, provides for the recording of bills of sale, mortgages, etc., by the collector of customs, in books to be kept for that purpose, in the order of their reception, and for the noting on the bill of sale, mortgage, etc., the time when the same was received, and for certifying thereupon, the number of the book and page where recorded; but no such bill of sale, etc., shall be recorded unless the same be duly acknowledged before a notary public or other officer authorized to take acknowledgment of deeds.

By section 4195, *id.*, the collectors of the customs shall furnish certified copies of such records, on the receipt of fifty cents for each bill of sale, etc.

As to the form of registry of vessels see section 4155, *id.* By section 4196, *id.*, all bills of sale of vessels registered or enrolled shall set forth the part of the vessel owned by each person selling, and the part conveyed to each person purchasing.

The recording of a mortgage of a vessel, in the office of the collector of the home port of such vessel, pursuant to United States Revised Statutes, §§ 4192-6, gives the mortgage a preference over a subsequent purchaser or mortgagee, by its own force, and irrespective of any formalities required by a State statute, to give effect to chattel mortgages. (*White's Bank v. Smith*, 7 Wall. 646; *Aldrich v. Aetna Co.*, 8 *id.* 491.)

Acknowledgment of a mortgage of a vessel is needful (under Revised Statutes, §§ 4192-3) only for the purpose of authenticating it for record; as between the parties, or as against persons having actual notice it is valid without acknowledgment or record. (*Moore v. Simonds*, 100 U. S. 145.)

See, also, forms Nos. 275, 276, and notes thereto.

No. 816.

Notice of sale on default in payment of chattel mortgage.

Notice is hereby given that default having been made in the payment according to the terms thereof, of the amount secured by a certain chattel mortgage,¹ executed by A. B. to C. D., dated on the — day of —, 1—, and filed in the — county clerk's office (or, in the town clerk's office of the town of — in the county of —; or, in the register's office of the county of —), on the — day of —, 1—, I shall expose for sale at public auction by virtue of said mortgage and the power of sale therein contained, on the

MORTGAGES OF REAL AND PERSONAL PROPERTY. 945

— day of —, 1—, at — o'clock in the — noon, at (naming place of sale), the property described in said mortgage, to wit: (describing the property).²

Dated the — day of —, 1—.

C. D., Mortgagee,
(or, E. F., Att'y for C. D., Mortgagee).

1. A demand by the mortgagee of chattels made after default in payment of the installments as provided therein for the payment of such installments, is a waiver of the breach of the condition of the mortgage which he cannot afterward recall and insist upon forfeiture. (*Van Loon v. Willis*, 13 Daly, 281.)

Where, after default in the payment of installments, the mortgagor demands their payment and the mortgagee offers to pay the amount demanded, the mortgagee has no right thereafter to refuse to receive the money and take the property as upon a forfeiture for breach of a condition of the mortgage, and if he do so he may be held liable in conversion for the value of the goods taken. (*Id.*)

2. When a chattel mortgage contains a power of sale, and a sale thereunder is fairly made at public auction, upon due notice to the mortgagor, his equity of redemption is cut off, although the chattels are purchased by the mortgagee. (*Edmiston v. Brucker*, 40 Hun, 256, limiting *Buffalo, etc., Works v. Sun Mutual Ins. Co.*, 17 N. Y. 401, and questioning *Pulver v. Richardson*, 3 Supr. Ct. [T. & C.] 436; *King v. Walbridge*, 48 Hun, 470.)

After default, the interest of the mortgagor of chattels is only an equity of redemption, and to sustain his action against the mortgagee for damages by reason of a sale upon default, so noticed and conducted that the property did not sell for so

much as it would have sold for on a fair sale, it is requisite, primarily, that the plaintiff should pay, tender, or offer in the complaint to pay, the amount due upon the mortgage. (*Brush v. Evans*, 53 N. Y. Super. Ct. [J. & S.] 523)

Where the mortgagee of chattels, after the day of payment had passed, sold part of the property by virtue of a power contained in the mortgage for sufficient to pay the mortgage debt with interest and expenses; *held*, that this was equivalent to absolute payment, and that the mortgagee's title to the chattels remaining unsold was extinguished; and the mortgagee having afterward sold the residue of the property, *held* also that such sale was a conversion of it, for which the mortgagee was liable in trover. (*Charter v. Stevens*, 3 Denio, 33.) See, also, *King v. Van Vleck* (40 Hun, 68).

The mortgagee is not bound to sell under the mortgage, although it contains a power of sale; and the fact that the amount due is so small that the mortgagor cannot maintain a suit in equity to redeem does not affect the case. (*Burdick v. McVanner*, 2 Den. 170.)

The sale of mortgaged chattels by the mortgagee, after forfeiture, to a third person, with the consent of the mortgagor, is equivalent to a formal foreclosure of the equity of redemption. (*Talman v. Smith*, 39 Barb. 290.)

See, also, *Chamberlain v. Martin* (43 Barb. 607); *Coe v. Cassidy* (72 N.

Y. 133); *Beers v. Waterbury* (8 Bosw. N. C. 403); *Jaqueth v. Merritt* (29 396); *Huggans v. Fryer* (1 Lans. 276); *Hun, 584*); *French v. Powers* (18 N. Allen v. Vose (34 Hun, 57); *Ballou Y. Week. Dig. 86*); *Sperry v. Baldwin* (46 Hun, 120); *King v. Walbridge* (48 id. 470).
Moloughney v. Hegeman (9 Abb.

No. 817.

Satisfaction of chattel mortgage by mortgagee or assignee.

(Laws of N. Y. of 1879, chap. 171.)

As in form No. 811, to (*), and from thence as follows:
 Chattel mortgage, bearing date the — day of —, 1—, made and executed by C. D. to me, A. B. (or, to E. F., and assigned to me, A. B., by assignment dated —, 1—), and filed in the office of the (town clerk of the town of —, in the county of — and State of New York) on the — day of —, 1—, at — o'clock, — M., is paid and satisfied.¹

Dated —, 1—.

A. B.

In presence of
 G. H.

(Certificate of acknowledgment or proof, as in forms Nos. 89, etc.)²

1. Chapter 171 of Laws of New York of 1879 provides, that whenever any mortgagor, or any person obtaining title to mortgaged property, shall present to any recorder, county or town clerk, in whose office a chattel mortgage executed by said mortgagor on such property may be filed, a certificate from the mortgagee therein named, or the holder or owner thereof, that such mortgage is paid or satisfied, it shall be the duty of such recorder or

either of the clerks above mentioned to file such certificate in his office and discharge such mortgage, by writing in the book kept by such recorder or either of such clerks, and opposite the entry therein of such mortgage, the word "discharged," with the date thereof. (Laws of N. Y. of 1879, p. 236; R. S., 7th ed., 2252.)

2. The act, however, does not require the certificate to be acknowledged or proved. See last note.

TITLE II.

STATUTORY FORMS OF MORTGAGES

- No. 818. Mortgage of real estate in State of California.
 819. Mortgage of personal property in same State.
 820. Mortgage of real property in Dakota Territory, now North and South Dakota.
 821. Mortgage of personal property in same Territory.
 822. Mortgage of lands in State of Illinois.
 823. Same in State of Indiana.
 824. Same in State of Iowa.
 825. Same in State of Kansas.
 826. Same in State of Maryland.
 827. Mortgage of personal property in State of Maryland.
 828. Mortgage of real property in State of Michigan.
 829. Same in State of Mississippi.
 830. Same in State of New York.
 831. Same in North Dakota.
 832. Same in Oklahoma Territory.
 833. Mortgage of personal property in same Territory.
 834. Mortgage of real property in South Dakota.
 835. Mortgage of real property in State of Tennessee.
 836. Deed of trust in same State.
 837. Deed of trust in lands in State of Virginia, to secure debts and indemnify sureties.
 838. Mortgage of real property in State of Washington.
 839. Deed of trust in lands in State of West Virginia, as security for debts and to indemnify sureties.
 840. Mortgage of real property in State of Wisconsin.

No. 818.

Mortgage of real estate in State of California.

(Civil Code of California, § 2948.)

This mortgage, made the — day of —, in the year —, by A. B., of —, mortgagor, to C. D., of —, mortgagee, witnesseth: That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of — dollars, on (or, before) the — day of —, in the year —, with interest thereon (or, as security for the payment of an obligation, describing it, etc.).¹

A. B.

(Acknowledgment, as in form No. 16.)

1. A mortgage of real property may above form). (Civil Code of Cal., be made in substantially the fol- § 2948.)
 lowing form: (here is inserted the No particular form or arrangement

of words is necessary. (Woodworth v. Guzman, 1 Cal. 483; DeLeon v. Higuera, 15 id. 483; Burnside v. Terry, 45 Ga. 621; Mason v. Moody, 26 Miss. 184; Wilcox v. Morris, 3 Am. Dec. 678.)

It is required by section 2922 of Civil Code above cited, to be in writing and executed with the formalities required in a case of a conveyance of real property.

Any interest in real property which is capable of being transferred may be mortgaged. (Id., § 2947.)

See as to description of premises. Whitney v. Buckman (13 Cal. 536); De Leon v. Higuera (*supra*); Hancock v. Watson (18 id. 137); Began v. O'Rielly (32 id. 11).

The homestead of a married person cannot be conveyed or incumbered unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife. (Civil Code of Cal., § 1242.)

See, also, forms Nos. 16, 17, and notes thereto.

No. 819.

Mortgage of personal property in State of California.

(Civil Code of California, § 2956.)

This mortgage, made the — day of —, in the year —, by A. B., of —, by occupation a —, mortgagor, to C. D., of —, by occupation a —, mortgagee, witnesseth: That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of — dollars, on (or, before) the — day of —, in the year —, with interest thereon (or, as security for the payment of a note or obligation, describing it, etc.).¹

A. B.

1. A mortgage of personal property may be made in substantially the following form: (here is inserted the above form of mortgage). (Civil Code of California, § 2956.)

The form is immaterial; the intention of the parties governs. Thus, a sale of personal property made to secure an indebtedness of the vendor to the vendee, makes the trans-

action a mortgage. (Moore v. Murdock, 2 Cal. 514.)

Under the chattel mortgage act of 1857, an occupation stated as that of "late merchant of Pine Grove," etc., is sufficient. (Ede v. Johnson, 15 id. 53.)

See, also, Collins v. Montgomery (16 id. 398), and see form No. 16 and note thereto.

No. 820.

Form of mortgage of real property in Dakota Territory, now North and South Dakota.

(Comp. Laws of Dakota, § 4366.)

This mortgage, made the — day of —, in the year —, by A. B., of —, mortgagor, to C. D., of —, mortgagee, witnesseth: That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of — dollars, on or before the — day of —, in the year —, with interest thereon (or, as security for the payment of an obligation, describing it, etc.).¹

Dated —, 1—.

A. B.

(Acknowledgment, as in forms Nos. 21, etc.)

1. A mortgage of real property like effect as grants thereof. (Id., may be made in substantially the § 4368.)

following form: (here is inserted the The record of a mortgage, duly above form of mortgage.) (Comp. made, operates as notice to all subsequent purchasers and incumbrancers. Laws of Dakota, § 4366.)

Mortgages of real property may (Id., § 4369.)

be acknowledged or proved, certified See, also, forms Nos. 21-25, and and recorded in like manner and with notes thereto.

No. 821.

Form of mortgage of personal property in Dakota Territory.

(Comp. Laws of Dakota, § 4372.)

This mortgage, made the — day of —, in the year —, by A. B., of —, by occupation a —, mortgagor, to C. D., of —, by occupation a —, mortgagee, witnesseth: That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of — dollars, on (or, before) the — day of —, in the year —, with interest thereon (or, security for the payment of a note or obligation, describing it, etc.).¹

Dated —, 1—.

A. B.

1. A mortgage of personal property inserted the above form of mortgage) may be made in substantially (Comp. Laws of Dakota, § 4372.)

the following form: (here is in- As to filing and its effect, see sec-

tions 4379-4383, id. Such mortgage must be signed by the mortgagor in the presence of two persons, who must sign the same as witnesses thereto, and no further proof or acknowledgment is required to admit it to be filed. (Id., § 4384.)

No. 822.

Mortgage of lands in State of Illinois.

(Rev. Stats. of Illinois, chap. 30, § 11.)

The mortgagor (here insert name or names), mortgages and warrants to (here insert name or names of mortgagee or mortgagees), to secure the payment of (here recite the nature and amount of indebtedness, showing when due and the rate of interest, and whether secured by note or otherwise), the following described real estate (here insert description thereof), situated in the county of —, in the State of Illinois¹ (hereby releasing and waiving all right under and by virtue of the homestead exemption law of this State.)²

Dated this — day of —, A. D. 1—.

A. B. [L. S.]

(Acknowledgment, as in form No. 36.)

1. Mortgages of lands may be in the following form substantially (here is inserted the above form). Every such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient mortgage in fee to secure the payment of the moneys therein specified; and if the same contains the words "and warrants," the same shall be construed the same as if full covenants of seizin, good right to convey against incumbrances, of quiet enjoyment and general warranty, as expressed in section 9 of this act (see note 1 to form No. 609), were fully written therein; but if the words "and warrants" are omitted, no such covenants shall be implied. (Rev. Stats. of Illinois, chap. 30, § 11.)
- See, also, form No. 36, and note thereto.
2. See, as to effect of this clause in parenthesis, note 1 to form No. 609.

No. 823.

Form of mortgage of real property in State of Indiana.

(Rev. Stats. of Indiana, § 2930.)

"A. B. mortgages and warrants to C. D. (here describe the premises) to secure the repayment of (here recite the sum

for which the mortgage is granted or the notes or other evidences of debt, or a description thereof, sought to be secured, also the date of the repayment.)”¹

Dated —, 1—.

A. B. [L. S.]

(Acknowledgment, as in forms Nos. 38, 39.)

1. Any mortgage of lands worded every lease for more than three years, in substance as follows: (here is inserted the form of mortgage above given in quotation marks) the said mortgage being dated and duly signed, sealed, and acknowledged by the grantor, shall be deemed and held to be a good and sufficient mortgage to the grantee, his heirs, assigns, executors and administrators, with warranty from the grantor and his legal representatives, of perfect title in the grantor, and against all previous incumbrances. And if, in the above form the words “and warrant” be omitted, the mortgage shall be good, but without warranty. (Rev. Stats. of Indiana. 2930.)

Every conveyance or mortgage of lands or of any interest therein, and

shall be recorded in the recorder's office of the county where such lands shall be situated; and every conveyance or lease not so recorded in forty-five days from the execution thereof, shall be fraudulent and void as against any subsequent purchaser, lessee, or mortgagee in good faith and for a valuable consideration. (Id. 2931.)

The record of a deed not recorded within the time given by law, but after that time, is notice to all purchasers after its recording. (Trisler v. Trisler, 38 Ind. 282; Gilchrist v. Gough, 63 id. 576.)

See, also, forms Nos. 38, 39, and notes thereto.

No. 824.

Form of mortgage of real property in State of Iowa.

(Ann. Code of Iowa, 3145.)

For the consideration of — dollars, I hereby convey to A. B. the following tract of land (describing it) “to be void upon conditions that I pay,” etc.¹

Dated —, 1—.

C. D.

(Acknowledgment, as in form No. 41, etc.)

1. The following or other equivalent forms, varied to suit circumstances, are sufficient for the purposes therein contemplated: (here are inserted forms of quit claim deed; deed in fee simple without warranty; deed in fee with warranty, as are given in form No. 614); and for a mortgage the same as deed of conveyance, adding the following, viz.: the words given in quotation marks in above form. (Ann. Code, etc., of Iowa, 3145.)

See, also, forms Nos. 41, 42, and notes thereto.

No. 825.**Form of mortgage of real property in State of Kansas.**

(Gen. Stats. of Kansas, § 3886.)

A. B. mortgages and warrants to C. D. (here describe the premises), to secure the payment of (here insert the sum for which the mortgage is granted, or the notes or other evidences of debt, or description thereof, sought to be secured, also the date of payment).¹

Dated —, 1—.

A. B.

(Acknowledgment, as in form No. 43.)

1. Any mortgage of lands, worded in substance as follows: (here is inserted above form of mortgage) the said mortgage being dated, and duly signed and acknowledged by the grantor, shall be deemed and held to be a good and sufficient mortgage to the grantee, his heirs, assigns, executors and administrators, with warranty from the grantor and his legal

representatives of a perfect title in the grantor, and against all previous incumbrances; and if in the above form the words "and warrants" be omitted, the mortgage shall be good without warranty. (Gen. Stats. Kansas, 3886.)

See, also, form No. 43, and notes thereto.

No. 826.**Form of mortgage of real estate in State of Maryland.**

(Pub. Gen. Laws of Maryland, art. 21, § 59.)

This mortgage, made this — day of —, by me, witnesseth: That in consideration of the sum of — dollars, now due from me, the said —, to —, I, the said —, do grant unto the said — (here describe the property); provided, that if I, the said —, shall pay, on or before the — day of —, to the said —, the sum of — dollars, with the interest thereon from —, then this mortgage shall be void.

Witness my hand and seal.¹

— — [SEAL.]

1. The above form of mortgage of real estate is provided by section 59 of article 21 of Code of Maryland, and is declared to be sufficient, and that any covenant, limitation, restriction or proviso allowed by law may be added, annexed thereto or introduced therewith.

By section 64, id., any other form of mortgage, conforming to the rules thereinbefore laid down, or to the rules of law, shall be sufficient.

See, also, forms Nos. 48-50, and notes thereto.

No. 827.

Form of mortgage of personal property in the State of Maryland.

(Pub. Gen. Laws of Maryland, art. 21, § 61.)

I, —, of — county, Maryland, being now indebted to —, of — county, in the sum of — dollars, with interest from —, in consideration thereof, do hereby bargain and sell to the said —, the following property (here describe property), provided, that, if I, the said —, shall pay to the said — the said sum of — dollars, with the interest thereon, on or before the — day of —, then these presents shall be void.

Witness my hand and seal, this — day of —.¹

— — [SEAL.]

1. The above form of mortgage of personal property is provided by section 61 of article 21 of the Code of Maryland, and is declared to be sufficient, and that any covenant, limitation, restriction or proviso allowed by law may be added, annexed thereto or introduced therewith.

By section 64, id., any other form of mortgage conforming to the rules thereinbefore laid down, or to the rules of law, shall be sufficient.

See, also, forms Nos. 48-50, and notes thereto.

No. 828.

Form of mortgage of real property in State of Michigan.

(Stats. of Michigan, § 5731.)

A. B. mortgages and warrants to C. D. (here describe the premises), to secure the repayment of (here recite the sum for which the mortgage is granted, or the notes or other evidence (evidences) of debt, or a description thereof, sought to be secured, also the date of the repayment).¹

Dated —, 1 —.

A. B. [L. S.]

(Acknowledgment, as in form No. 54.)

1. Any mortgage of lands worded in substance as follows: (here is inserted the above form of mortgage), the said mortgage being dated and

duly signed, sealed and acknowledged by the grantor, shall be deemed and held to be a good and sufficient mortgage to the grantee, his heirs,

assigns, executors and administrators, with warranty from the grantor and his legal representatives, of perfect title in the grantor, and against all previous incumbrances. And if in the above form the words "and war-

rant" be omitted, the mortgage shall be good, but without warranty. (How. Ann. Stats. of Mich., § 5731.) See, also, form No. 54, and notes thereto.

No. 829.

Form of mortgage of real property in State of Mississippi.

(Code of Mississippi, §§ 2479, 2483.)

In consideration of (here state it), I convey and warrant to — the land described as (describe it), in trust to secure [here state what is secured, and all the necessary provisions].

Witness my signature, the — day of —, A. D. 1—. — —.¹

(Acknowledgment, as in form No. 58.)

1. See sections 2479 and 2483 of Code of Mississippi (1892), as to above form.

A conveyance, mortgage, deed of trust, or other incumbrance upon the homestead exempted from execution shall not be valid or binding unless signed by the wife of the owner, if he be married and living with his wife. [Id., § 1983 (old Code, § 1258, am'd).] Where the homestead is the property of the wife, the instrument must be signed and acknowledged by the owner and the husband, if he be living with his wife. (Id., § 1985; old Code, § 1260.)

When a married woman unites with her husband in the execution of

an instrument, and acknowledges the same in one of the forms above sanctioned, she should be described in the acknowledgment as his wife; but in all other respects, and when she executes any instrument affecting her separate property, real or personal, her acknowledgment shall be taken and certified as if she were sole; and a separate examination of a married woman in respect to the execution of any instrument affecting real estate or other property, shall not be required, nor shall a failure to describe her as the wife of the grantor affect the acknowledgment. (Id., § 2465.)

See, also, forms Nos. 58, 59, 625, and notes thereto.

No. 830.

Form of mortgage of real property in State of New York.

(Laws of N. Y. of 1890, chap. 475, § 6.)

This indenture, made the — day of —, in the year eighteen hundred and —, between A. B., of —, party of the first part, and C. D., of —, party of the second part:

Whereas, the said A. B. is justly indebted to the said party of the second part in the sum of — dollars, lawful money of the United States, secured to be paid by his certain bond or obligation, bearing even date herewith, conditioned for the payment of the said sum of — dollars, on the — day of —, eighteen hundred and —, and the interest thereon, to be computed from —, at the rate of — per centum per annum, and to be paid. . . . It being thereby expressly agreed that the whole of the said principal sum shall become due after default in the payment of any installment of principal, interest, taxes or assessments, as hereinafter provided.

Now this indenture witnesseth: That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of one dollar paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant and release unto the said party of the second part, and to his heirs (or, successors) and assigns forever (description), together with the appurtenances, and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever. Provided always, that if the said party of the first part, his heirs, executors or administrators, shall pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents and the estate hereby granted shall cease, determine and be void.

And the said party of the first part covenants with the party of the second part as follows:

1. That the said party of the first part will pay the indebtedness as hereinbefore provided, and if default be made in the payment of any part thereof, the party of the second part shall have power to sell the premises therein described according to law.

2. That the said party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

3. And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said party of the second part after default in the payment of any installment of principal or of interest for — days, or after default in the payment of any tax or assessment for — days, after notice and demand.

In witness whereof, the said party of the first part hath hereunto set his hand and seal, the day and year first above written.¹

In presence of

A. B. [L. S.]

(Acknowledgment, as in forms Nos. 89, etc.)

1. The above form of mortgage is the one contained in Schedule C, annexed to chapter 547 of Laws of New York of 1896, as amended by chapter 277 of Laws of 1897. See, also, note

1 to form No. 584, and see section 219 of said chapter 547 of Laws of 1896, as amended by chapter 277 of Laws of 1897, and section 222 of said chapter 547.

No. 831.

Form of mortgage of real property in State of North Dakota.

See form No. 820.

No. 832.

Form of mortgage of real property in Oklahoma.

(Stats. of Oklahoma, chap. 23, § 6.)

Know all men by these presents, that I, —, hereby mortgage to —, to secure the payment of — dollars due as follows: — the following described real property situated in — county, Territory of Oklahoma, to wit: — with all the appurtenances, and warrant the title to the same.

Signed and delivered this — day of —, 1—. ¹

(Acknowledgment, as in form No. 110.)

1. Every mortgage in substance in the above form, provided in the preceding section, when otherwise properly executed, shall be deemed and

held a good and sufficient mortgage in fee simple to secure the payment of the money therein specified, and if the same contain the words "and

warrant the title to the same," it shall be construed the same as if full covenants of seizure, good right to convey, against incumbrances of quiet enjoyment, and general warranty, as expressed in section 3, were fully written therein, or if the words "and warrant the title to the same" are omitted, no such covenant shall be implied. (Stats. of Oklahoma, chap. 23, § 7.) The above form is given by § 6, id.

By section 21 of chapter 54, id., the following form of mortgage of real property is given: "This mortgage made — day of —, in the year —, by A. B. of —, mortgagor, to C. D. of —, mortgagee, witnesseth: That the mortgagor mortgages to the mortgagee (here describe the property), as security for the pay-

ment to him of — dollars on or before the — day of — in the year — with interest thereon (or, as security for the payment of an obligation (describing it, etc.)."

It would seem, therefore, that either of the above forms of mortgage of real property would be sufficient under the statutes of that Territory.

Mortgages of real property may be acknowledged or proved, certified, and recorded in like manner and with like effect as grants thereof. (Id., chap. 54, § 23.)

The record of a mortgage, duly made, operates as notice to all subsequent purchasers and incumbrancers. (Id., chap. 54, § 24.)

See, also, forms Nos. 110-112, 638, and notes thereto.

No. 833.

Form of mortgage of personal property in Oklahoma Territory.

(Stats. of Oklahoma, chap. 54, § 27.)

This mortgage, made the — day of —, in the year —, by A. B., of —, by occupation a —, mortgagor, to C. D., of —, by occupation a —, mortgagee, witnesseth: That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of — dollars, on (or, before) the — day of —, in the year —, with interest thereon (or, security for the payment of a note or obligation, describing it, etc.).¹

A. B.

1. A mortgage of personal property may be made in substantially the following form: (here is inserted the above form of mortgage.) (Stats. of Oklahoma, chap. 54, § 27.)

Such mortgage must be signed by the mortgagor in the presence of two persons, who must sign the

same as witnesses thereto, and no further proof or acknowledgment is required to admit it to be filed. (Id., § 39.)

See sections 34, etc., of same chapter as to filing of such mortgage and effect thereof.

No. 834.**Form of mortgage of real property in State of South Dakota.**

See form No. 820.

No. 835.**Mortgage of real property in State of Tennessee.**

(Code of Tennessee, § 2820.)

I hereby convey to A. B. the following land : (describing it), to be void upon condition that I pay, etc.¹

Dated —, 1—.

(Signature.) [L. S.]

(Acknowledgment, as in form No. 127.)

1. The above form of mortgage is in note to form No. 644, and see given by section 2820 of the Code of forms Nos. 127-130, 644, and notes Tennessee. See that section cited thereto.

No. 836.**Deed of trust in State of Tennessee.**

(Code of Tennessee, § 2820.)

“For the purpose of securing to A. B. a note of this date, due at twelve months, with interest from date (or, as the case may be), I hereby convey to C. D., in trust, the following property (describing it); and if the note is not paid at maturity, I hereby authorize C. D. to sell the property herein conveyed (stating the manner, place of sale, notice, etc.), to execute a deed to the purchaser, to pay off the amount herein secured, with interest and costs, and to hold the remainder subject to my order.”¹

Dated —, 1—.

(Signature.) [L. S.]

(Acknowledgment, as in form No. 127.)

1. The above form as contained in that section quoted in note to form quotation marks is given by section No. 644, and see forms Nos. 127-2820 of the Code of Tennessee, see 130, 644, and notes thereto.

No. 837.

Deed of lands in trust in State of Virginia, to secure debts and indemnify sureties.

(Code of Virginia, § 2441.)

See note 1 to form No. 648, for this form of security, and as to acknowledgment, see the form referred to in that note.

No. 838.

Form of mortgage of real property in State of Washington.

(Ann. Stats. of Washington, § 1647.)

“The mortgagor (here insert name or names) mortgages to (here insert name or names of mortgagee or mortgagees), to secure the payment of (here recite the nature and amount of indebtedness, showing when due, rate of interest, and whether secured by note or not), the following described real estate (here insert description), situated in the county of —, State of Washington.

“Dated this — day of —, 1 —.”

A. B.

(Acknowledgment, as in form No. 141.)

1. Mortgages of land may be in secure the payment of the money the following form, substantially: therein specified. The parties may (here is inserted the above form of insert in such mortgage any lawful mortgage, as quoted). agreement or condition. (Ann. Stats.

Every such mortgage, when other- and Codes of Washington, § 1647.) See, also, forms Nos. 141, 649-651, wise properly executed, shall be and notes thereto. deemed and held a good and sufficient conveyance and mortgage to

No. 839.

Form of deed of trust of real property in West Virginia, as security for debts and to indemnify sureties.

(Code of West Virginia, chap. 72, § 4.)

See note 1 to form No. 652 and the note and form therein referred to, as to this form of security; and as to acknowledgment, see forms Nos. 142-144, and notes thereto.

No. 840.

Form of mortgage of real property in State of Wisconsin.

(Stats. of Wisconsin, § 2209.)

A. B., mortgagor, of — county, Wisconsin, hereby mortgages to C. D., mortgagee, of — county, Wisconsin, for the sum of — dollars, the following tract of land in — county: (here describe the premises).

This mortgage is given to secure the following indebtedness: (here state amount or amounts and form of indebtedness, whether as note, bond or otherwise, time or times when due, rate of interest, by and to whom payable, etc.).

The mortgagor agrees to pay all taxes and assessments on said premises, and the sum of — dollars, attorney's fees, in case of foreclosure thereof.

Witness the hand and seal of said mortgagor this — day of —, 1—.¹

In presence of

— —,
— —.

— —. [L. S.]

— —. [L. S.]

(Acknowledgment, as in form No. 145.)

1. A mortgage may be substantially in the following form: (here is inserted the above form of mortgage). When executed and acknowledged as required by law, it shall have the effect of a conveyance of the land therein described, together with all the rights, privileges and appurtenances thereunto belonging, in pledge to the mortgagee, his heirs, assigns, and legal representatives, for the payment of the indebtedness therein set forth, with covenant from the mortgagor that all taxes and assessments levied and assessed upon the land described, during the continu-

ance of the mortgage, shall be paid previous to the day appointed by law for the sale of land for taxes, as fully as the forms of mortgage now and heretofore in common use in this State, and may be foreclosed in the same manner, and with the same effect, upon any default being made in any of the conditions thereof as to payment of either principal, interest or taxes. (Stats. of Wisconsin, § 2209.)

No form of conveyance hereinbefore prescribed in this chapter shall be deemed to exclude the use of any other form sufficient in law; and it is

the duty of all parties executing a conveyance of real estate to state therein, as near as practicable, the actual and true consideration of such conveyance. (Id., § 2214.)

A scroll or device as a seal upon any conveyance of land or other instrument whatever, whether intended to be recorded or not, shall have the same force and effect as a seal at-

tached thereto or impressed thereon, and the conveyance or instrument be of the same obligation as if actually sealed; but this section shall not apply to such official or corporate seals as are or may be provided by law. (Id., §2215.)

Two witnesses are required.

See, also, forms Nos. 145, 653 and notes thereto

CHAPTER XXIX.

Forms of Naturalization of Foreigners.

(U. S. Rev. Stats., § 2165, etc.)

- No. 841. Declaration by alien of intention to become a citizen of the United States.
842. Certificate of clerk.
843. The like, in another form.
844. Petition of alien for admission.
845. Proof of residence.
846. Oath of alien on his application to be admitted to citizenship
847. Certificate of naturalization.
848. Order of court admitting alien.
849. Oath to be filed to enable aliens in certain cases to hold and convey real estate in the State of New York.

No. 841.

Declaration by alien of intention to become a citizen of the United States.

(U. S. Rev. Stats., § 2165, subd. 1.)

I, C. D., do hereby declare, on oath (or, affirm), pursuant to statute, that it is *bona fide* my intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to all and any foreign prince, potentate, state and sovereignty whatever; and particularly to William, emperor of Germany (or, otherwise naming former allegiance), of which empire I am at this time a citizen and subject.

C. D.

Sworn (or, affirmed) in open court, {
 this — day of —, 1—. }

M. N.;

Clerk, etc.

1. This declaration must be made by the alien upon oath, before a Circuit or District Court of the United States, or a District or Supreme Court of the Territories, or a court of record of any of the States having common

law jurisdiction and a seal and clerk, two years, at least, prior to his admission. (Rev. Stats. of U. S., § 2165.)

Such declaration is not required, but certain evidence may be substituted therefor, from persons who resided here, between June, 1798, and June, 1812; or from aliens honorably discharged from the military service, or from minor residents; but in the latter case the alien must make the required declaration at the time of

his admission. (Id., §§ 2165, subd. 6; 2166, 2167.)

By act of January 25, 1876, chap. 4 (19 Stat. 2), the declaration may be made by an alien before the clerk of any of the courts named in section 2165, *supra*, and all such declarations theretofore made before any such clerk are declared to be as legal and valid as if made before one of the courts named in that section.

See, also, chapter 927 of Laws of New York of 1895, p. 742.

No. 842.

Certificate of clerk.

I, M. N., clerk of the — Court, do certify that the above is a true copy of the original declaration of intention of C. D. to become a citizen of the United States, remaining of record in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, the — day of —, one thousand — hundred and —.¹

[SEAL OF COURT.]

M. N.,
Clerk.

(Annex copy of declaration, last form, No. 841.)

1. See chapter 927 of Laws of New York of 1895.

No. 843.

The like, in another form.

— COUNTY, ss.:

Be it remembered, that C. D. appeared in the City Court of the city of Albany, in the State of New York, on the — day of —, in the year of our Lord one thousand — hundred and — (the said court being a court of record, having common law jurisdiction and a clerk and seal), and declared on oath, in open court, that it was *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince,

potentate, State or sovereignty whatever and particularly to the empire of Germany and the emperor thereof.

In testimony whereof, the seal of the said City Court of the city of Albany is hereunto affixed, this —
 [SEAL.] day of — in the year of our Lord one thousand
 — hundred and —, and of our independence
 the —.¹ M. N., Clerk.

1. See chapter 927 of Laws of New York of 1895.

No. 844.

Petition of alien for admission.

To the City Court of the city of Albany :

The petition of C. D., of the (city) of —, in, etc., respectfully shows, that your petitioner is an alien, born within and under the dominions of the —, to wit, in —; that he was residing within the limits and under the jurisdiction of the United States, between the — day of —, in the year 1 —, and the — day of —, in the year 1 —, and has continued to reside therein ever since, and that the time of such his residence within the United States is at least five years now last past, and at least one year immediately preceding this application, within the State of New York; that your petitioner is desirous of becoming a citizen of the United States of America, and is willing to conform to the Revised Statutes of the United States, and the several acts in addition thereto; that his declaration of intention was made, etc. (state the time and place, etc.) Wherefore your petitioner humbly prays this honorable court to admit him as a citizen as aforesaid, on complying with the requisition of the said statutes. And your petitioner, etc.¹

Dated —, 1 —.

C. D.

1. See section 2165 of United States Revised Statutes, and see chapter 927 of Laws of N. Y. of 1895.

No. 845.

Proof by witness of residence and good behavior of applicant.

(U. S. Rev. Stats., § 2165, subd. 3.)

— COURT, — COUNTY, ss.:

E. F., of —, being duly sworn (or, affirmed), deposes and says: That he has been for the last five years acquainted

with C. D., now present; that said A. B. has resided within the United States five years last past, and without the State (or, Territory) of — one year at least, and that during that time he, said A. B., has behaved himself as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same¹ (and that said C. D. became of the age of twenty-one years on the — day of —, 1—, and that he resided within the United States at least three years next preceding his arriving at that age.)²

(Jurat, as in form No. 841.)

E. F.

1. See subdivision 3 of section 2165 of the United States Revised Statutes, as to this deposition.

2. See section 2167 of same statutes, as to this clause in parenthesis.

See, also, chapter 927 of Laws of New York of 1895.

No. 846.

Oath of alien on his application to be admitted to citizenship.

(U. S. Rev. Stats., § 2165, subd. 2.)

— COURT, — COUNTY, ss.:

I, C. D., do hereby solemnly declare on oath (or, affirm), pursuant to statute, that I will support the Constitution of the United States, and that I do absolutely and entirely renounce and abjure allegiance and fidelity to every foreign prince, potentate, State and sovereignty whatever, and particularly to William, emperor of Germany (or, name other former allegiance), of which empire I was before a citizen and subject¹ (and I do hereby expressly renounce the earldom of — [or, the title of — (according to the fact)], by me heretofore held or borne, or to which I am entitled).² (And I further declare on oath (or, affirm) that it is *bona fide* my intention to become a citizen of the United States, and that such has been my intention for the past two years.)³

C. D.

(Jurat, as in form No. 841.)

1. The proceedings must be recorded by the clerk of the court. (U. S. R. S., § 2165, subd. 2.)

2. If the applicant has borne any hereditary title, or been of any of the orders of nobility in the kingdom or

state from whence he came, insert son of his minority, has never filed his
this clause. declaration of intention. (Id., § 2167.)

3. This declaration must be added See, also, chapter 927 of Laws of
in the case of a minor who, by rea- New York of 1895.

No. 847.

Certificate of naturalization.

UNITED STATES OF AMERICA, }
STATE OF —, } ss.:
County of —, }

Be it remembered, that on the — day of —, in the year of our Lord one thousand — hundred and —, C. D., formerly of —, in the empire of —, now of the (city) of —, in the State of —, appeared in the — court (the said court being a court of record, having common law jurisdiction and a clerk and seal), and applied to said court to be made a citizen of the United States of America, pursuant to the provisions of the several acts of the congress of the United States of America for that purpose made and provided. And the said applicant having thereupon produced to the court such evidence, made such declaration and renunciation, and taken such oaths as are by the said acts required, thereupon it was ordered by the said court that the said applicant be admitted, and he was accordingly admitted by the said court, to be a citizen of the United States of America.

In testimony whereof, the seal of the said court is hereunto affixed this — day of —, in
{ SEAL OF } the year of our Lord one thousand —
{ THE COURT. } hundred and —, and in the year of our
independence the —.¹

Per Curiam.

M. N.,
Clerk.

¹ See note 1 to form No. 841.

No. 848.

Order of court admitting alien to citizenship.

At a Special Term of the Superior Court of the city of New York, held in the court house on the — day of —, 1—.

Present — Hon. —, Judge.

In the matter of the application of A. B. to be admitted a citizen of the United States of America. }

The said applicant appearing personally in court, and producing the evidence required by the acts of congress, and having made such declaration and renunciation, and having taken such oaths as are by the said acts required, it is ordered by the said court that the said applicant be admitted to be a citizen of the United States of America.¹

Enter. (Judge's signature.)

1. See chapter 927 of Laws of New York of 1895.

No. 849.

Oath to be filed to enable aliens in certain cases to hold and convey real estate in the State of New York.

(N. Y. Rev. Stats., part 2, chap. 1, tit. 1, § 15.)

UNITED STATES OF AMERICA, }
STATE OF NEW YORK, } ss.:
County of —, }

C. B., being duly sworn (or, affirmed), doth depose and say, that he is a resident of the (State) of (New York), and intends always to reside in the United States and to become a citizen thereof, as soon as he can be naturalized, and that he has taken such incipient measures as the laws of the United States require, to enable him to obtain naturalization.¹

(Jurat, as in form No. 32.)

C. B.

1. Any alien who has come in or firmation in writing, as above, before may hereafter come into the United any officer authorized to take the States, may make a deposition or af- proof of deeds to be recorded, which

shall be certified by such officer, and be filed and recorded by the secretary of State in a book to be kept by him for that purpose; and such certificate, or a certified copy thereof, shall be evidence of the facts therein contained. (1 N. Y. R. S. 720, § 15; 7th ed. 2164; Birdseye's Codes, etc., 2516.)

Any alien who shall make and file such deposition, shall thereupon be authorized and enabled to take and hold lands and real estate, of any kind whatsoever, to him, his heirs and assigns forever, and may during six years thereafter, sell, assign, mortgage, devise and dispose of the same, in any manner, as he might or could do if he were a native citizen of this State, or of the United States, except that no such alien shall have

power to lease or demise any real estate, which he may take or hold by virtue of this provision, until he become naturalized. (Id., § 16.)

Such alien shall not be capable of taking or holding any lands or real estate which may have descended, or been devised or conveyed to him previously to his having become such resident and made such deposition or affirmation as aforesaid. (Id., § 17.)

It seems, that the provision requiring aliens to take incipient measures and to file affidavit before holding lands (1 R. S. 720) does not abolish the common law right to take by purchase. The government alone can take advantage of an alien's disability to hold lands. (Matter of Leefe, 4 Edw. Ch. 395.)

See sections 4 and 5 of chapter 547 of Laws of New York of 1896, by which the provisions of the Revised Statutes upon this subject are repealed.

CHAPTER XXX.

Forms of Oaths and Proclamations, etc.

TITLE I.

COURT FORMS OF OATHS.

- No. 850. Oath of a witness in a civil cause.
- 851. Oath of interpreter in civil action.
- 852. Same in case of deaf and dumb witness.
- 853. Oath of witness on the *voir dire*.
- 854. Oath of party or witness to admit evidence of contents of paper.
- 855. Same before proving the handwriting of a subscribing witness.
- 856. Oath of jurors in civil or criminal cause.
- 857. Same in justice's court.
- 858. Oath of triers in a civil cause on challenge for favor.
- 859. Oath of witness on challenge of jurors for favor.
- 860. Finding of triers.
- 861. Oath of officer on retiring with juror on leave of absence.
- 862. Oath of officer in charge of jury retiring for consideration.
- 863. Oath of officer in charge of jury on adjournment.
- 864. Oath on application to excuse or discharge a juror or constable.
- 865. Oath to foreman of grand jury.
- 866. Oath of grand jurors.
- 867. Oath of juror or constable for the remission of a fine.
- 868. Oath of poor witness on application for expenses.
- 869. Oath of prisoner as to his poverty.

No. 850.

Oath of a witness in a civil cause.

The evidence which you shall give in this issue, joined (or, which you shall give relating to the matter in difference) between E. F., plaintiff, and G. H., defendant, shall be the truth, the whole truth, and nothing but the truth, so help you God.¹

1. It is no defense to a prosecution for perjury that an oath was administered or taken in an irregular manner. The term "oath" includes an affirmation, and every other mode authorized by law of attesting the

truth of that which is stated. (Penal Code of N. Y., § 97.) See, also, note 1 to form No. 104, and section 851 of New York Code of Civil Procedure. See, also, § 14 of Laws of New York

of 1892, ch. 677. The words in parenthesis are given in the form of oath to a witness in a justice's court, prescribed by section 3000 of the New York Code of Civil Procedure.

No. 851.

Oath of interpreter in civil action.

You shall well and truly interpret between the court, the jury, the counsel and the witness in this issue joined, between E. F., plaintiff, and G. H., defendant, so help you God.¹

1. See note 1 to last form, No. 850.

No. 852.

Same in case of deaf and dumb witness.

You shall well and truly interpret to A. B., a witness here produced in behalf of G. H., in this issue joined between E. F., plaintiff, and G. H., defendant, the questions and demands made by the court to the said A. B., and his answers made to them, so help you God.¹

1. See note 1 to form No. 850.

No. 853.

Oath of witness on the voir dire.

You shall true answers make to such questions as shall be put to you touching your interest in the event of this action, so help you God.¹

1. See note 1 to form No. 850.

No. 854.

Oath of party or witness, to admit evidence of contents of paper.

You shall true answers make to such questions as shall be put to you touching your power or control over any paper (or, touching the loss or destruction of any paper) which would be proper evidence in this action, so help you God.¹

1. See note 1 to form No. 850.

No. 855.

Same, before proving the handwriting of a subscribing witness.

You shall true answers make to such questions as shall be put to you concerning your ability (or, the plaintiff's or defendant's ability) to procure the attendance of C. D., a subscribing witness to this paper (or, the paper in question), so help you God.¹

1. See note 1 to form No. 850.

No. 856.

Oath of jurors in a civil or criminal cause.

You and each of you, shall well and truly try the several issues which you shall have in charge at this (Circuit Court), and true verdict in them respectively give, according to the evidence, so help you God.

(Or, you do swear (or, you do solemnly affirm, as the case may be) that you will well and truly try this issue, between the people of the State of New York, and A. B., the defendant, and a true verdict give according to the evidence).¹

1. This form of oath in criminal Procedure. See, also, note 1 to form causes is prescribed by section 711 No. 850.
of the New York Code of Criminal

No. 857.

Same in Justices' Court.

You do solemnly swear (or, affirm) that you will well and truly try the matter in difference between —, plaintiff, and —, defendant, and unless discharged by the justice, a true verdict give, according to the evidence.¹

1. This form of oath is prescribed ministered to each juror. See, also, by section 2998 of the New York note 1 to form No. 850.
Code of Civil Procedure, to be ad-

No. 858.**Oath of triers in a civil action upon challenge for favor.**

You shall well and truly try, and truly find, whether C. B., the juror challenged, stands indifferent between F. E., plaintiff, and G. H., defendant, in the issue about to be tried, so help you God.¹

1. See note 1 to form No. 850.

No. 859.**Oath of witness on challenge of juror for favor.**

You shall true answers make to such questions as shall be put to you touching the challenge of C. B., a juror, so help you God.¹

1. See note 1 to form No. 850, and *People v. McGonegal* (136 N. Y. 62); *People v. Fanshawe* (137 id. 68).

No. 860.**Finding of triers.**

The finding is that A. B. stands (not) indifferent.

No. 861.**Oath of officer on retiring with jurors on leave of absence.**

You shall retire with such jurors as have leave of absence from this court. You shall not speak to them yourself in relation to this trial, nor suffer any one to speak to them; and you shall return them to the court without delay, so help you God.¹

1. See note 1 to form No. 850.

No. 862.**Oath of officer in charge of jury retiring for consideration.**

You do swear that you will keep the jury together in some private and convenient place, without food or drink, except bread and water, unless ordered by the court; that you will

not permit any person to speak to or communicate with them, nor do so yourself, unless it be to ask them whether they have agreed upon a verdict; and that you will return them into court when they have so agreed, or when ordered by the court.¹

1. See note 1 to form No. 850.

No. 863.

Oath of officer in charge of jury on adjournment.

You shall retire with the jury to some convenient room to be furnished by the sheriff; you shall not suffer any person to speak to or communicate with them, nor do so yourself on any subject connected with this trial, and shall return them at the order of the court at the next meeting thereof, so help you God.¹

1. See note 1 to form No. 850.

No. 864.

Oath on application to excuse or discharge a juror or constable.

You shall true answers make to such questions as shall be put to you touching your application (or, the application for and in behalf of —) to be discharged (or, excused) from attendance as a juror (or, constable) at this court, so help you God.¹

1. See note 1 to form No. 850.

No. 865.

Oath to foreman of grand jury.

You, as foreman of this grand jury, shall diligently inquire and true presentment make of all such matters and things as shall be given you in charge; the counsel of the people of this State, your fellows and your own, you shall keep secret; you shall present no person from envy, hatred or malice; nor shall you leave any one unrepresented through fear, favor, affection or reward, or hope thereof; but you shall

present all things truly as they come to your knowledge, according to the best of your understanding, so help you God.¹

1. This form of oath is prescribed by section 245 of the New York Code of Criminal Procedure. See, also, note 1 to form No. 850.

Code of Criminal Procedure, the foreman of the grand jury is authorized to administer an oath to any witness appearing before the grand jury.

By section 253 of the New York

No. 866.

Oath of grand jurors.

The same oath which your foreman has now taken before you on his part, you and each of you shall well and truly observe on your part, so help you God.¹

1. This form of oath is prescribed by section 246 of the New York Code of Criminal Procedure. By section 247, id., it is provided, that if after the foreman and the grand jurors then present are sworn, any other grand juror appear, and be admitted as such, the oath as prescribed in section 245 (last form, No. 865) must be administered to him, commencing "You, as one of this grand jury," and so on to the end.

No. 867.

Oath on application of juror or constable for the remission of a fine.

You shall true answers make to such questions as shall be put to you, touching your application (or, the application for and in behalf of —) for the remission of your (or, his) fine, for default in attending as a juror (or, constable) at this (or, some former) term of this court, so help you God.¹

1. See note 1 to form No. 850.

No. 868.

Oath of poor witness on application for expenses.

You shall true answers make to such questions as shall be put to you, touching your application for the expenses of your attendance at this court as a witness in behalf of the people of this State, so help you God.¹

1. See note 1 to form No. 850.

No. 869.**Oath of prisoner as to his poverty.**

I, A. B., a prisoner confined in the — county jail, do solemnly swear (or, affirm) that I am unable to support myself during my imprisonment.¹

1. In any county, if a prisoner, jailor, as above, his support is actually confined in jail, makes oath county charge. (N. Y. Code Civ. before the sheriff, jailor or deputy Proc., § 112.)

TITLE II.**MISCELLANEOUS FORMS OF OATHS.**

No. 870. General form of oath of office.

871. Oath of arbitrators.

872. Oath of witness before arbitrators.

No. 870.**General form of oath of office.**

I do solemnly swear (or, affirm) that I will support the Constitution of the United States and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of — according to the best of my ability.¹ (*)

[And I do further solemnly swear (or, affirm) that I have not, directly or indirectly, paid, offered or promised to pay, contributed, or offered or promised to contribute, any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote.]

A. B.

1. Members of the legislature (and they enter on the duties of their respective offices, take and subscribe except such inferior officers as shall the following oath or affirmation: be by law exempted,) shall, before (here is inserted the above form of

oath, to (*)), and all such officers who shall have been chosen at any election shall, before they enter on the duties of their respective offices, take and subscribe the oath or affirmation above prescribed, together with the following addition thereto, as part thereof: (here is inserted above form as contained in brackets, from the (*)). (N. Y. Const., art. 12, § 1, as amended in 1874.)

See, also, the different forms of official oaths, contained herein under their appropriate titles.

A person who executes any of the functions of a public office without

having taken and duly filed the required oath of office, or without having executed and duly filed the required security, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, he forfeits his right to the office. (N. Y. Pen. Code, § 42.) This provision is not to affect the validity of acts done by a person exercising the functions of a public office in fact, where other persons than himself are interested in maintaining the validity of such acts. (Id., § 43.)

See, also, 1 R. S. 119-121; §§ 21-32, 131; Birdseye's Stats., etc., 2119.

No. 871.

Oath of arbitrators.

(N. Y. Code Civ. Proc., § 2369.)

In the matter of the arbitration between A. B. and G. H. }

COUNTY OF —, ss.:

We, the undersigned, arbitrators, appointed by and between A. B. and G. H., do hereby swear that we respectively will faithfully and fairly hear and examine the matters in controversy between the before named parties, and will make a just award therein, according to the best of our understanding.¹

(Signatures of arbitrators.)

(Jurat, as in form No. 32.)

1. The statutory provision in regard to this oath in the State of New York is contained in section 2369 of the Code of Civil Procedure. It may, under that section, be made before any officer designated in section 842, id., or may be waived by the written consent of the parties to the submission or their attorneys.

In a submission to arbitration, or arbitration bond outside of the statute, it may be required or not by the appointment or bond, and omitted or taken accordingly. See, also, *Kelsey v. Darrow* (22 Hun, 125); *New York Lumber Co. v. Schneider* (119 N. Y. 475), cited in part in note 1 to form No. 168.

No. 872.**Oath of witness before arbitrators.**

You do swear that the evidence you shall give to the arbitrators here present, on certain matters of difference between A. B. and G. H., shall be the truth, the whole truth, and nothing but the truth, so help you God.¹

1. See, as to oaths and manner of State, sections 841-851 of New York administering them in New York Code of Civil Procedure.

TITLE III.**FORMS OF PROCLAMATIONS, TAKING VERDICT; POLLING JURY, ETC.**

- No. 873. Proclamation by crier on opening the court.
874. Same for return of process by sheriff.
875. Same before calling grand jury.
876. Same for return of recognizances, etc.
877. Same for silence on charging grand jury.
878. Same for imposition of fines.
879. Same for bail to produce their principals.
880. Same for the discharge of a prisoner against whom no bill is found.
881. Same for discharge.
882. Same for appearances on recognizances.
883. Same to persons bound to answer.
884. Same before calling petit jury.
885. Same for jury in civil or criminal action.
886. Same for defendant on an inquest.
887. Same for plaintiff to appear and prosecute.
888. Address by the clerk to prisoner before calling jury.
889. Proclamation by crier upon swearing a juror.
890. Same for witness under recognizance to appear and testify.
891. Same for arraignment of prisoners.
892. Same before sentence is pronounced.
893. Same of adjournment.
894. Same of opening of court after adjournment.
895. Same of final adjournment.
896. Taking of recognizance by clerk.
897. Order for attachment against witness.
898. Arraignment of a party under indictment.
899. Taking verdict in a capital or other criminal case.
900. Polling of jury in such case.

- No. 901. Taking of verdict in civil action.
- 902. Polling of jury in such action.
- 903. Entry of verdict in such action.
- 904. Notice of drawing a jury.
- 905. Notice of drawing additional jury, pursuant to order of judge.

No. 873.

Proclamation, by crier, on opening the court.

Hear ye, hear ye, hear ye: All manner of persons who have any business to do at this County Court (and Court of Sessions) (or, Circuit Court and Court of Oyer and Terminer, etc.), let them draw near, give their attendance and they shall be heard.

No. 874.

Proclamation, by crier, for return of process by sheriff.

Hear ye, hear ye, hear ye: Sheriff of the county of —: Return the writs and precepts to you directed and delivered, and returnable here this day, that the court may proceed thereon.

No. 875.

Proclamation, by crier, before calling grand jury.

Hear ye, hear ye, hear ye: You who are here returned to inquire for the people of the State of New York for the body of the county of —, answer to your names at the first call and save your fines (calling each name in order)

No. 876.

Proclamation, by crier, for return of recognizances, etc.

All justices of the peace, coroners, sheriffs and other officers, who have taken any recognizances, examinations or other matters, return the same to the court here, that they may proceed thereon.

No. 877.**Proclamation, by crier, for silence on charging the grand jury.**

All persons are strictly charged and commanded to keep silence while the court is giving the charge to the grand jury, on pain of fine or imprisonment.

No. 878.**Proclamation, by crier, for imposition of fines.**

Hear ye, hear ye, hear ye: The court has imposed a fine of — dollars upon each of the following persons for their non-attendance as grand jurors (or, petit jurors; or, constables) at this court, to wit, on A. B., of —, on C. D., of —, etc.

No. 879.**Proclamation, by crier, for bail to produce their principal.**

Hear ye, hear ye, hear ye: C. D. and E. F., bring forth your principal, A. B., whom you have undertaken to have here to-day, or you will forfeit your recognizance.

No. 880.**Proclamation, by crier, for the discharge of a prisoner, against whom no bill is found.**

Hear ye, hear ye, hear ye: If any man can show cause why A. B. should stand longer bound (or, imprisoned), let him come forth and he shall be heard, for he stands upon his discharge.

No. 881.**Proclamation, by crier, of discharge.**

Hear ye, hear ye, hear ye: No cause being shown why A. B. should longer remain in custody of the sheriff of the county of —, he is discharged.

No. 882.**Proclamation, by crier, for appearances on recognizances.**

Hear ye, hear ye, hear ye : All persons who are bound by recognizance to prosecute, or prefer any bill of indictment against any prisoner or other person, let them come forth and prosecute, or they will forfeit their recognizances.

No. 883.**Proclamation, by crier, for persons bound to answer.**

Hear ye, hear ye, hear ye : A. B., come forth and answer to your name, and save yourself and your bail, or you will forfeit your recognizance.

No. 884.**Proclamation, by crier, before calling petit jury.**

Hear ye, hear ye, hear ye : You good men who are here returned to try the several issues to be tried at this Circuit Court and Court of Oyer and Terminer (or, at this County Court and Court of Sessions), held in and for the county of —, answer to your names at the first call and save your fines.

No. 885.**Proclamation, by crier, for jury in civil or criminal action.**

Hear ye, hear ye, hear ye : You good men who are here empanelled and returned to try this issue joined between A. B., plaintiff, and C. D., defendant (or, to inquire between the people of the State of New York and A. B., the prisoner at the bar ; or, to try this issue (of traverse) between the people, etc., and C. D., defendant), answer to your names as you are called, and save your fines.

No. 886.**Proclamation, by crier, for defendant on an inquest.**

A. B., come forth and make your challenges, or you will lose your challenges, and an inquest will be taken against you by default.

No. 887.

Proclamation, by crier, for plaintiff to appear and prosecute.

A. B., appear and prosecute your action, or your default will be entered.

No. 888.

Address by the clerk to prisoner before calling jury.

A. B., these good men that you shall now hear called, are the jurors who are to pass between the people of the State of New York and you (or, to pass upon your life and death);¹ if, therefore, you will challenge them, or any of them, you must challenge them as they come to the book to be sworn, and before they are sworn, and you shall be heard.

1. Substitute these words in parenthesis in a capital case.

No. 889.

Proclamation, by crier, upon swearing the juror.

Juror, look upon the prisoner; prisoner, look upon the juror.

No. 890.

Proclamation, by crier, for witness under recognizance to appear and testify.

Hear ye, hear ye, hear ye: E. F., who is bound by recognizance to give evidence against G. H., the prisoner at the bar, come forth, answer to your name and give evidence, or you will forfeit your recognizance.

No. 891.

Proclamation, by crier, for arraignment of prisoners.

All persons are strictly charged and commanded to keep silence while the court proceeds to arraign the prisoners on indictment for felony.

No. 892.

Proclamation, by crier, before sentence is pronounced.

Hear ye, hear ye, hear ye: All manner of persons are commanded to keep silence while judgment is pronounced upon the prisoner.

No. 893.

Proclamation, by crier, of adjournment.

Hear ye, hear ye, hear ye: All manner of persons who have any further business to do at this court, may depart hence and appear here again (to-morrow morning) at ten o'clock, to which time this court is adjourned.

No. 894.

Proclamation, by crier, of opening court after adjournment.

Hear ye, hear ye, hear ye: All manner of persons who have been adjourned over to this hour, and have any further business to do at this court, may draw near and give their attendance, and they shall be heard.

No. 895.

Proclamation, by crier, of final adjournment.

Hear ye, hear ye, hear ye: This court is adjourned *sine die* (or, without day).

No. 896.

Taking of recognizance by clerk.

You (and each of you) acknowledge yourself (or, yourselves) to be indebted to the people of the State of New York, in the sum of — dollars (or, to wit: You, A. B., in the sum of — dollars, and you, C. F., in the sum of — dollars), to be levied of your (and each of your) goods and chattels, lands and tenements, to the use of the said people,

if default shall be made in the condition following, to wit: The condition of this recognizance is such that if (you), A. B., shall appear at the Court of Sessions (or, of Oyer and Terminer) to be held in and for the county of —, then and there (or, from day to day during the sitting of this court), to answer and stand trial upon a certain indictment against you for felony (or, misdemeanor), (or, to testify and give evidence on the trial of a certain indictment against E. F., for felony (or, misdemeanor), and not to depart the court without leave, and to abide its order and decision, then this recognizance to be void, otherwise to remain in full force and virtue. Are you (and each of you) content?

No. 897.

Order for attachment against witness.

(Title of case.)

On reading and filing due proof of the service of a subpoena upon F. G., to appear here this day as a witness upon the trial of this indictment, and said G. being called and not appearing, and on motion of A. B., Esq., district attorney, it is ordered that an attachment issue against the said F. G.¹

1. Disobedience to a subpoena, or Code of Civil Procedure. (N. Y. Code of Civil Procedure, § 619.) For such a refusal to be sworn or to testify, Code of Criminal Procedure, § 619.) For such may be punished by the court or proceeding, see form No. 1, Lansing's Forms of Civil Procedure. magistrate, as for a criminal contempt, in the manner provided in the

No. 898.

Arraignment of a party under indictment.

The clerk either reads the indictment or states to the prisoner that he has been indicted by the grand jury for a felony (or, for a misdemeanor), stating the facts charged in the indictment, and asks:

Do you demand a trial on this indictment? (or, Do you plead guilty or not guilty to this indictment?)¹

1. When an indictment is filed the defendant must be arraigned thereon, before the court in which it is found, or before the court to which it is sent or removed. (N. Y. Code of Criminal Procedure, § 296.) If an indictment be for felony, the defendant must be personally present when arraigned; but for a misdemeanor only, his personal appearance is unnecessary, and he may appear upon the arraignment by counsel. (Id., § 297.)

No. 899.**Taking of verdict in a capital or other criminal case.**

Gentlemen of the jury, please answer to your names (calling them one by one). Have you agreed upon your verdict? (answer, yes). (*) Jurors, look upon the prisoner. Who shall say for you? (the foreman rises). How say you, do you find the prisoner at the bar guilty of the felony (and murder) whereof he stands indicted, or not guilty? (the foreman answers "guilty," or "not guilty"). Then the clerk adds:

Hearken to your verdict, as the court hath recorded it. You say that you find the prisoner at the bar guilty (or, not guilty) of the felony (and murder) whereof he stands indicted, and so you all say? ¹

1. See sections 433-437 of New York Code of Criminal Procedure, as to the manner of taking the verdict.

In cases not capital or of felony, the words "Jurors, look upon the

prisoner" may be omitted, and the words contained in next form, No. 900, be used as descriptive of the crime in place of those above given.

No. 900.**Polling a jury.**

Gentlemen of the jury, answer to your names as you are called. (*) A. B., how say you, do you find the prisoner at the bar guilty of the felony (and murder) (or, misdemeanor; or, crime; or, offense; or, riot; or, assault and battery and riot)¹ whereof he stands indicted, or not guilty? (and so call the rest one by one.)

1. In cases not capital these words in parenthesis may be inserted according to the circumstances, and the words "felony (and murder)" omitted.

When a verdict is rendered, and before it is recorded, the jury may be

polled, on the requirement of either party; in which case they must be severally asked whether it is their verdict; and if any one answer in the negative, the jury must be sent out for further deliberation. (N. Y. Code Crim. Proc., § 450.)

No. 901.**Taking of verdict in civil action.**

As in form No. 899, to (*), and from thence as follows:
How do you find? (The foreman rises and says): We find for the defendant (or, for the plaintiff), — dollars damages; (or, we find the title of the property in question to be in the plaintiff, and assess the value thereof at — dollars.)

(The clerk then says: Gentlemen, listen to your verdict as it stands recorded. You say you find, etc. (repeat the finding of the jury), and so you all say.¹

1. See, as to verdict and taking —1189 of the New York Code of Civil thereof, in civil actions, sections 1181 Procedure.

No. 902.**Polling of jury in civil action.**

As in form No. 900, to (*), and from thence as follows:
A. B., you say you find for the defendant (or, you find for the plaintiff and assess his damages at — dollars); C. D., you say, etc. (putting the same question to each juror, and when all have answered, then say): Then, gentlemen of the jury, hearken to your verdict, as the court has recorded it: You say you find (state the finding), and so say you all.¹

1. See note 1 to last form, No. 901.

No. 903.**Entry of verdict in civil action.**

(Title of action.)

At a Circuit Court held at, etc., on the — day of —,
1—.

Present — Hon. I. J., Justice.

Jurors (insert their names).

Witnesses for plaintiff (insert their names).

Witnesses for defendant (insert their names).

Verdict for the defendant (or, plaintiff), damages — dollars; or, verdict for plaintiff against defendant C. D., damages — dollars; and verdict for the defendant E. D. against

the plaintiff; or, verdict for the plaintiff and the value of the property assessed at \$—; or, verdict for the plaintiff for possession of the real property, and damages for withholding same, assessed at \$—.¹

(Add any direction given by the court as to the subsequent proceedings.)

1. When the jury renders a verdict, or finds upon one or more specific questions of fact, stated under the direction of the court, the clerk

must make an entry in his minutes, specifying the time and place of the trial; the names of the jurors and witnesses; the verdict, or the questions and findings thereupon, as the case requires; and the direction, if any, which the court gives, with respect to the subsequent proceedings. Upon the application of the party in whose favor a general verdict is rendered, the clerk must enter judgment in conformity to the verdict, unless a different direction is given by the court, or it is otherwise specially prescribed by law. (N. Y. Code Civ. Proc., § 1189.)

Where the foreman of a jury by mistake announced a verdict different from that agreed upon, and the erroneous statement was entered and recorded, *held*, that the court might, at the same circuit, correct the record so as to conform to the actual finding, and that upon such an application, it being to establish and not to impeach the true verdict, jurors' affidavits were admissible. (Dalrymple v. Williams, 63 N. Y. 361.) See, also, Weeks v. Hart (24 Hun, 181); Hodgkins v. Mead (119 N. Y. 166).

No. 904.

Notice of drawing a jury.

STATE OF NEW YORK,
(CITY AND) COUNTY OF — (*), }
Clerk's office.

Notice is hereby given, that on (Monday) the — day of —, 1—, a panel of petit and grand jurors will be drawn at this office, to serve at a Circuit Court and Court of Oyer and Terminer (or, Court of Sessions), to be held in and for the (city and) county of —, at —, in the (city) of —, on (Monday), the — day of —, 1—.¹

A. C. R.,
Clerk.

1. At least six days before the drawing, the county clerk must publish a notice thereof, in a newspaper published in the county, if there is one; or, if there is none, he must affix a notice thereof on the outer door of the building where the term, for which the jurors are to be drawn, is

appointed to be held. He must, also, upon the special county judge, or, in at least three days before the time appointed for the drawing, cause notice thereof to be served upon the sheriff of the county, and upon the county judge, or, in case of his absence,

No. 905.

Notice of drawing additional jury, pursuant to order of judge.

As in last form to (*), and from thence as follows: In the (Supreme Court of the State of New York). Whereas, in my opinion more than — jurors will be required to attend the (Circuit Court and Court of Oyer and Terminer), to be next held in and for the county of —, on the — day of — next, I do hereby order and direct that — additional jurors, to serve at said court, be drawn and summoned according to law.¹

Witness my hand the — day of —, 1—.

D. C. H.,

Justice, etc.

STATE OF NEW YORK, }
(CITY AND) COUNTY OF —, }
Clerk's office.

Notice is hereby given, that on (Monday), the — day of —, 1—, in pursuance of the foregoing order for — additional jurors, a panel of petit jurors will be drawn at this office, to serve at a (Circuit Court and Court of Oyer and Terminer), to be held in and for the (city and) county of —, at —, in the (city) of —, on (Monday), the — day of 1—.

A. C. R.,

Clerk.

1. A justice of the Supreme Court, appointed to hold a term of the Circuit Court, or to preside at a term of the Court of Oyer and Terminer, may, by an order under his hand, direct that such a number of jurors, as he deems necessary, not exceeding twenty-four, be drawn for that term, in addition to the thirty-six jurors to be drawn as prescribed in the foregoing sections of this article. A county judge may, in like manner, direct the drawing of a like additional number of jurors, for a term of the County Court, or of the Court of Sessions, to be held in his county. (N. Y. Code Civ. Pro., § 1056.)

CHAPTER XXXI.

Forms Relating to Partnerships.*See, also, Agreements.*

TITLE I.

LIMITED PARTNERSHIPS.

No. 906. Certificate of formation of limited partnership, and affidavit of general partner.

907. Notice of terms of limited partnership for publication.

908. Affidavit of publication of notice, form No. 907.

No. 906.**Certificate of formation of limited partnership, and affidavit of general partner.****A. P. & Co.—Certificate of limited partnership**

The undersigned, being desirous of forming a limited partnership, pursuant to the provisions of the statutes of the State of New York, do hereby certify as follows: (*)

1. That the name or firm under which said partnership is to be conducted is A. P. & Co. 2. That the general nature of the business intended to be transacted thereby is (the buying and selling, transacting and dealing in buttons and trimmings, and similar merchandise). 3. That the names of all the general and special partners interested therein are as follows: A. P. (and M. N.) is (or, are) the general partner (or, partners), whose place of residence is (or, the place of residence of said A. P. being) No. — Q. street, in the (city) of B., in the county of — and State of New York, and the place of residence of said M. N. being, etc.), and I. S. M. is the special partner, whose place of business is No. — street, in the (city) of B., in the county of B. and State of New York. 4. That the amount of capital which the

said special partner has contributed to the common stock is — dollars in cash. 5. That the period at which the said partnership is to commence is the — day of —, 1—, and the period at which it will terminate is the — day of —, 1—. (†)

In witness, etc. (as in form No. 270).¹

A. P.
(M. N.)
J. M.

(Acknowledgment or proof, as in form No. 89.)

(County clerk's certificate, when required.)²

(CITY AND) COUNTY OF —.

A. P., of — (and M. N., of —), being (severally) duly sworn, says (or, say): That he is (or, that they are) the general partner (or, partners) named in the foregoing certificate, and that the sum of — dollars, specified in said certificate to have been contributed by I. S. M. as a special partner to the common stock has been actually and in good faith paid in cash.³

A. P.
(M. N.)

(Jurat, as in form No. 32.)

1. See 1 New York Revised Statutes, 764, § 4; Birdseye's Stats., etc., 2169, as to this certificate and its contents, and see Haggerty v. Taylor (10 Pai. 261); Madison Co. Bank v. Gould (5 Hill, 309); Van Ingen v. Whitman (62 N. Y. 513); Durant v. Abendroth (69 id. 148; S. C., 97 id., 132); Allison v. Abendroth (108 id. 470); Prest., etc., of Manhattan Co. v. Laimbeer (id., 578, rev'g S. C., 21 J. & S. 84); Kohler v. Lindenmeyer (58 Hun, 173); White v. Eiseman (id. 484); Metropolitan Nat. Bank v. Palmer (30 N. Y. State Rep. 509; S. C., 9 N. Y. Supp. 239); Fifth Avenue Bank v. Colgate (120 N. Y. 381), among other cases construing the provisions of the statute, and see 21 Abb. N. C. 55, *note*;

First Nat. Bank v. Huber (75 Hun. 80); Buck v. Alley (145 N. Y. 488, rev'g S. C., 82 Hun, 29).

As to acknowledgment or proof of certificate see Laws of New York of 1837, chap. 129, § 1. It is required to be filed and recorded in the office of the clerk of the county in which the principal place of business of the partnership shall be situated. (1 N. Y. R. S. 764, § 6; Birdseye's Stats., etc., 2170.)

Every renewal or continuance of such partnership, beyond the time originally fixed for its duration, shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed and notice be given, in the manner herein

required for its original formation; and every such partnership which shall be otherwise renewed or continued, shall be deemed a general partnership. (Id., § 11.) See, as to such certificate, *Ropes v. Colgate* (17 Abb. N. C. 136); *Fifth Ave. Bank v. Colgate* (120 N. Y. 381, rev'g S. C., 55 N. Y. Super. Ct. 541; S. C. (54 N. Y. Super. Ct. 188).

2. If the partnership shall have places of business situated in different counties, a transcript of the cer-

tificate and of the acknowledgment thereof, duly certified by the clerk in whose office it shall be filed, under his official seal, shall be filed and recorded in like manner, in the office of the clerk of every such county. (1 R. S. 764, § 6, cited in above note.)

3. This affidavit is required to be filed at the time of filing the original certificate. It is not, however, required to be recorded. (Same statutes, above cited, § 7.) See, also, provisions of article 3 of chapter 420 of Laws of New York of 1897, upon this subject, by which chapter the above mentioned provisions of the Revised Statutes are repealed.

No. 907.

Notice of terms of limited partnership for publication.

The undersigned hereby give notice, that according to the statutes of the State of New York relating to limited partnerships, they have duly formed a limited partnership, and the terms thereof are as follows: (here insert substantially from form No. 906, from (*) to (†).¹

Dated —, 1—.

(Signatures.)

I hereby designate, pursuant to statute, The —, and The —, two newspapers published in the (city) of —, in which (city) the business of the partnership therein mentioned is to be carried on, as the newspapers in which the foregoing notice shall be published according to law.

Dated —, 1—.

A. M.,

County Clerk of — County.

1. The statute requires the publication of this notice, for at least six weeks immediately after the registry of the certificate in two newspapers, to be designated by the clerk of the county in which the registry shall be made, and to be published in the senate district or city or town in which their business shall be carried on; and if such publication be not made the partnership is to be deemed

general. (1 N. Y. R. S. 765, § 9, as amended by Laws of 1862, chap. 476, § 2; *Birdseye's Codes*, etc., 2176.)

See, also, *Argall v. Smith* (3 Den. 435, aff'g S. C., 6 Hill, 479); *Bowen v. Argall* (24 Wend. 476); *Metropolitan Nat. Bank v. Sirret* (97 N. Y. 320); *The President, etc., of Manhattan Co. v. Phillips* (109 N. Y. 383); and see provisions of chapter 420 of Laws of N. Y. of 1897, referred to in note 1 to form No. 906.

No. 908.**Affidavit of publication of notice, form No. 907.**

— COUNTY, ss.:

A. B., of —, being duly sworn, says: That he is the printer (or, one of the printers) of The —, a newspaper published in the (city) of —, in the county of — and State of New York, and that the annexed notice of the terms of the limited partnership therein mentioned has been published in the said — for six successive weeks, commencing on the — day of —, 1—, and ending on the day of —, 1—, the first publication thereof having been made on the — day of —, 1—.¹

(Jurat, as in form No. 32.)

A. B.

(Annex copy of notice, form No. 907.)

1. Affidavits of the publication of such notice by the printers of the newspapers in which the same shall be published, may be filed with the clerk directing the same, and shall be evidence of the facts therein contained. (1 N. Y. R. S. 765, § 10; Birdseye's Codes, etc., 2176.) See, also, note 1 to last form, No. 907.

TITLE II.
FORMS RELATING TO CONTINUED USE OF PARTNERSHIP NAME.

No. 909. Certificate of continued use of partnership name.

910. Same certificate in case of death of person carrying on a business.

No. 909.**Certificate of continued use of partnership Name.**

I (or, We), the undersigned, A. B., whose place of abode is at the city of —, in the county of — and State of New York (and C. D., whose place of abode is, etc.), do hereby certify, pursuant to statute, that he is (or, that they are) the person (or, persons) dealing under the firm name of (A. B. and Company)¹, in the business of (stating same), at (stating principal place of business).

A. B.

Dated —, 1—.

C. D.

(Acknowledgment, as in form No. 89.)

1. See Laws of New York of 1854, amended by Laws of 1881, chapter 400, sections 1 and 2, as 389, as to this certificate and its con-

tents; such certificate is required by that section to be filed with the clerk of the county in which shall be the principal place of business of the persons signing the same, and is to be published in a newspaper printed in the town or city in which shall be such principal place of business, or if none be printed in such town, then in a newspaper printed in the county town, and in the newspaper printed by the printer to the state, for four successive weeks. See, also, *Caswell v. Hazard* (121 N. Y. 484).

For form of affidavit of publication see form No. 907, which follow substantially (*Id.*, § 4). As to manner of publication of notice, see *Wood v. Knapp* (100 N. Y. 109, 113). *Anonymous* (Col. & Caine's Cases, 428).

The provisions of the act, chapter 400 of Laws of New York of 1854, are applicable to firms or copartnerships having business relations with foreign countries, and to all copartnerships in the State who have transacted business therein for a period of three years or upwards, and to any limited partnership formed under the laws thereof, whose general partners, or the majority of them, shall have been members of the prior copartnership, and who shall elect to continue their business under the name of such prior copartnership and comply with the requirements of the act. (*Id.*, § 4, as amended by Laws of 1888, chap. 142.)

See, also, provisions of article 2 of chapter 420 of Laws of New York of 1897, p. 561, by which chapter, chapter 400 of Laws of 1854, chapter 142 of Laws of 1888, and chapter 389 of Laws of 1881 are repealed.

No. 910.

Same certificate in case of death of person carrying on a business.

I (or, We), the undersigned, A. B., whose place of residence is at the (city) of —, in the county of —, and State of New York, and C. D., whose place of residence is, etc., do hereby certify, pursuant to statute, that he is (or, they are) the person (or, persons) dealing (or, intending to deal) under the name of E. F., deceased,¹ in the business of (stating same), at (stating principal place of business).

Dated —, 1—.

A. B.

C. D.

(Acknowledgment, as in form No. 89.)

1. See chapter 561 of Laws of New York of 1880, as amended by Laws of 1881, chapter 398, sections 1 and 2, as to the above certificate and the contents thereof; such certificate is required by said section 2 to be filed in the county where it is intended the principal place of business shall be, and a copy thereof is required to be published in a newspaper printed in the town or city in which shall be such principal place of business, or if none

be printed in such town, then in a newspaper printed in the county town, and in the newspaper printed by the printer to the State for four successive weeks.

See, also, *Arnstadt v. Blumenfeld* (23 N. Y. Week. Dig. 31; S. C., 13 Daly, 354); *Blake v. Barnes* (26 Abb. N. C. 208).

For form of affidavit of publication of the certificate, see form No. 907, which follow, substantially. See, also, note 1 to form No. 909.

CHAPTER XXXII.

Forms Relating to Patents.

- No. 911. Application for issue of letters patent.
 912. Specification and claim to be filed with application, form No. 911.
 913. Same in case of a machine.
 914. Oath to be made by applicant.
 915. Oath of executor, etc., of inventor, on such application.
 916. Surrender of patent for reissue.
 917. Assignment of right in patent.
 918. Disclaimer.
 919. Petition on addition of new improvements.
 920. Assignment of entire or partial interest in invention.
 921. Application for patents for designs.
 922. Specifications for designs.
 923. Form of *caveat*.
 924. Oath of applicant for design.
 925. Deposition upon interference.
 926. Amendments to specification.
 927. Appeal to the examiners in chief.

No. 911.**Application for issue of letters patent.**

(U. S. R. S., § 4888.)

To the Commissioner of Patents:

The petition of S. C., of —, in the county of H., in the State of —, respectfully represents(†): That your petitioner has invented a new (and improved mode of preventing steam boilers from bursting), which he verily believes has not been known or used prior to the invention thereof by your petitioner. (*) He therefore prays that letters patent of the United States may be granted him therefor, vesting in him and his legal representatives the exclusive right to the same, upon the terms and conditions expressed in the

act of Congress in that case made and provided ; he having paid fifteen dollars into the treasury, and complied with the other provisions of the said act.¹

S. C.

1. See section 4888 of the Revised Statutes of the United States as to this application.

No. 912.

Specification and claim to be filed with application.

(U. S. R. S., § 4888.)

To all whom it may concern :

Be it known, that I, S. C., of C., in the county of H., and State of M., have invented (*) a new and improved mode of preventing steam boilers from bursting, and I do hereby declare that the following is a full and exact description thereof (reference being had to the accompanying drawings and to the letters of reference marked thereon) :

The nature of my invention consists in providing the upper part of a steam boiler with an aperture in addition to that for the safety valve, which aperture is to be closed by a plug, or disk, of alloy, which will fuse at any given degree of heat, and permit the steam to escape, should the safety valve fail to perform its functions.

To enable others skilled in the art to make and use my invention, I will proceed to describe its construction and operation: I construct my steam boiler in any of the known forms, and apply thereto gauge-cocks, a safety valve, and the other appendages of such boilers ; but, in order to obviate the danger arising from the adhesion of the safety valve, and from other causes, I make a second opening in the top of the boiler, similar to that made for the safety valve, as shown at A, in the accompanying drawing, and in this opening I insert a plug or disk of fusible alloy, securing it in its place by a metal ring and screws, or otherwise. This fusible metal I, in general, compose of a mixture of lead, tin and bismuth, in such proportions as will insure its melting at a given temperature, which must be that to which it is intended to limit the steam ; and will of course,

vary with the pressure the boiler is intended to sustain. I surround the opening containing the fusible alloy by a tube B, intended to conduct off any steam which may be discharged therefrom. When the temperature of the steam, in such a boiler, rises to its assigned limit, the fusible alloy will melt, and allow the steam to escape freely, thereby securing it from all danger of explosion.

What I claim as my invention, and desire to secure by letters patent, is the application to steam boilers of a fusible alloy, which will melt at a given temperature, and allow the steam to escape, as herein described; using for that purpose any metallic compound which will produce the intended effect.¹

S. C.

Witness:

J. D.

R. R.

1. See section 4888 of the Revised Statutes of the United States as to this specification.

No. 913.

Same for machine.

(U. S. R. S., § 4888.)

Be it known that I, S. C., of —, in the county of — and State of —, have invented a new and useful (improvement on a; or, on the) machine for (stating use and title of the machine), and I do hereby declare that the following is a full, clear and exact description of the construction and operation of the same, reference being had to the annexed drawings, making a part of this specification, in which figure 1 is a perspective view, figure 2 a longitudinal elevation, figure 3 a transverse section, etc. (thus describing all the sections of the drawings, and then referring to the parts by letters). Then follows the description and operation of the machine, and ending with the claim, which should express the nature and character of the invention, and identify the part or parts claimed separately or in combination. If the

specification is for an improvement, the original invention should be disclaimed, and then the claim confined to the improvement.¹

Witness :

S. C.

J. D.

R. R.

1. See section 4888 of the Revised Statutes of the United States as to this specification and claim.

No. 914.

Oath to be made by applicant.

(U. S. R. S., § 4892.)

COUNTY OF H., STATE OF M., ss.:

On this — day of —, 1—, before the subscriber, a (insert official description), personally appeared the within named S. C., and made solemn oath (or, affirmation) that (*) he verily believes himself to be the original and first inventor of the mode herein described for preventing steam boilers from bursting, and that he does not know or believe the same was ever before known or used (*), and that he is a citizen of the (United States).¹

(Signed.)

S. C.

1. See section 4892 of the Revised Statutes of the United States as to this oath.

No. 915.

Oath of executor, etc., of inventor on application for a patent.

(U. S. R. S., § 4896.)

As in form No. 914, to (*) and from thence as follows: He verily believes that J. F., late of, etc., now deceased, was the original and first inventor of the mode herein described for (preventing steam boilers from bursting); and that he does not know or believe the same was ever before known or used; and that said J. F. was a citizen of (the United States): That said — is the executor of the last will and testament (or, administrator of all and singular the goods, etc.) of said J. F.¹

(Signature of officer)

(Official title.)

1. See section 4896 of the Revised Statutes of the United States as to this oath.

No. 916.**Surrender of patent for reissue.**

(U. S. R. S., § 4916.)

To the Commissioner of Patents:

The petition of S. C. of —, in the county of —, and State of —, respectfully represents:

That he obtained letters patent of the United States for an improvement in the boilers of steam engines, which letters are dated on the — day of —, 1—. That he now believes that the same is inoperative and invalid, by reason of a defective (or, insufficient) specification, which defect has arisen from inadvertence and mistake. He therefore prays that he may be allowed to surrender, and he hereby does surrender the same, and requests that new letters patent may issue to him for the same invention, for the residue of the period for which the original patent was granted, under the amended specification herewith presented; he having paid thirty dollars¹ into the treasury of the United States, agreeably to the requirements of section 4916 of the Revised Statutes of the United States, in that case made and provided.²

S. C.

STATE OF — (CITY AND) COUNTY OF —, ss.:

On this — day of —, 1—, before the subscriber a (insert official title) personally appeared the above named S. C., and made solemn oath (or, affirmation) that he verily believes that, by reason of an insufficient or defective specification, his aforesaid patent is not fully valid and available to him; and that the said error has arisen from inadvertence, accident or mistake, and without any fraudulent or deceptive intention, to the best of his knowledge or belief.

M. E.

(Official title.)

1. See section 4934 of the Revised Statutes of the United States, as to the amount of this fee. 2. See section 4916 of same statutes as to this application.

No. 917.**Form of assignment of a right in a patent.**

Whereas, I., S. C., of C., in the county of H., and State of M., did obtain letters patent of the United States for certain improvements in steam engines, which letters patent bear date the first day of March, 1835; and whereas, J. D., of C., aforesaid, is desirous of acquiring an interest therein: Now this indenture witnesseth: That for and in consideration of the sum of (two thousand) dollars, to me in hand paid, the receipt of which is hereby acknowledged, I have assigned, sold and set over, and do hereby assign, sell and set over, all the right, title and interest which I have in the said invention, as secured to me by said letters patent, for, to and in the several States of New York, New Jersey and Pennsylvania, and in no other place or places. The same to be held and enjoyed by the said J. D. for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me, had this assignment and sale not been made.

In testimony whereof, I have hereunto set my hand and affixed my seal, this — day of —, 1—. ¹

Witness:

S. C. [L. S.]

A. B.

C. D.

1. See form No. 251 for assignment of entire or part interest in patent rights; and see notes to that form. An assignment, grant or conveyance is void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the patent office within three months from the date thereof. (U. S. R. S., § 4898.)

No. 918.**Form of disclaimer.**

To the Commissioner of Patents:

The petition of S. C., of C., in the county of H., and State of M., respectfully represents: That he has, by assignment duly

recorded in the patent office, become the owner of a right for the several States of Massachusetts, Connecticut and Rhode Island, to certain improvements in the steam engine, for which letters patent of the United States were granted to John Doe, of Boston, in the State of Massachusetts, dated on the — day of —, 1—. That he has reason to believe that, through inadvertence and mistake, the claim made in the specification of said letters patent is too broad, including that of which the said patentee was not the first inventor. Your petitioner, therefore, hereby enters his disclaimer to that part of the claim in the aforementioned specification, which is in the following words, to wit: "I also claim the particular manner in which the piston of the above described engine is constructed, so as to insure the close fitting of the packing thereof to the cylinder, as set forth;" which disclaimer is to operate to the extent of the interest in said letters patent vested in your petitioner, who has paid ten dollars into the treasury of the United States, agreeably to the requirements of the act of Congress in that case made and provided.¹

S. C.

1. In case of disclaimer by the original patentee, it must be so worded as to express that fact. See, as to disclaimer, section 4917 of the Revised Statutes of the United States.

No. 919.

Petition on addition of new improvements.

To, etc. (as in form No. 911.)

That your petitioner did obtain letters patent of the United States, for an improvement in the boilers of steam engines, which letters patent are dated on the — day of —, 1—; that he has since that date made certain improvements on his said invention; and that he is desirous of adding the subjoined description of his said improvements to his original letters patent, agreeable to the provisions of the Revised Statutes of the United States, he having paid fifteen dollars into the treasury of the United States, and otherwise complied with the requirements of said statutes.

S. C.

No. 920.**Assignment of the entire or partial interest in invention.**

See forms Nos. 257, 258.

No. 921.**Application for patents for designs.**

To, etc., as in form No. 911.

That your petitioner has invented or produced (a new design or figure to be stamped or printed on fabrics, which when thus printed are called calicoes), which he verily believes has not been known prior to the production thereof by your petitioner. He therefore prays, etc. [concluding as in form No. 911, adding thereto after the (*) the words, for the term of (naming term elected by applicant)].

S. C.

1. See section 4929 of the Revised Statutes of the United States as to this application and to what designs it applies.

By section 4934 of same statutes the following fees are required to be paid into the treasury on filing the original application in design cases :

For three years and six months, ten dollars; for seven years, fifteen dollars; for fourteen years, thirty dollars. By section 4931, id., these terms are prescribed as the terms for which patents for designs may be granted, as the applicant may, in his application, elect.

No. 922.**Specifications for designs.**

As in form No. 912, to (*), and from thence as follows: or produced a new (design or figure to be printed on fabrics, which, when thus printed, are termed calicoes), and I do hereby declare that the following is a full and exact description of the same: (Here follows a description of the design or figure with reference to the specimen, or to a drawing of it, in all cases which admit of representation by drawings.)

The specification to conclude with declaring what the inventor or producer claims, to be expressed in terms which will give the character of the design, etc.¹

1. See section 4929 of the Revised Statutes of the United States, as to this specification, and see note 1 to form No. 921.

The commissioner may dispense with models of designs when the design can be sufficiently represented by drawings or photographs. (U. S. R. S., § 4930.) which apply to obtaining or protecting patents for inventions or discoveries not inconsistent with the provisions of title 60 of those statutes, are made applicable to patents for designs. (Id., § 4933.)

No. 923.**Form of caveat.**

To the Commissioner of Patents:

The petition of S. C., of C., in the county of H., and State of M., respectfully represents: That he has made certain improvements in the mode of constructing the boilers of steam engines; and that he is now engaged in making experiments for the purpose of perfecting the same, preparatory to his applying for letters patent therefor. He therefore prays that the subjoined description of his invention may be filed as a *caveat*, in the confidential archives of the patent office, agreeably to the provisions of the act of congress in the case made and provided; he having paid ten dollars into the treasury of the United States, and otherwise complied with the requirements of the said act.

C—, —, I—.

S. C.

(Here should follow a description of the general principles of the invention, so far as it has been completed.)

No. 924.**Oath of applicant for patent upon design.**

As in form No. 914, to (*), and from thence as follows: or producer of the (design for figures to be printed on fabrics, which, when thus printed, are termed calicoes); and that he does not know or believe that the same was ever before known or used, and that he is a citizen of (the United States).

A. B.

(Official title.)

No. 925.

Deposition on interference.

In the matter of the interference of —
 —
 with
 —

—, being duly sworn, says, in answer to interrogatories proposed to him by —, counsel for —, as follows, viz:

1. Interrogatory: What is your name, residence and occupation?

1. Answer: My name is —; I am a —, and reside at —.

And in answer to cross interrogatories proposed to him by, etc., as follows, viz.:

1. Cross interrogatory: (Stating it.)

1. Answer: (Stating it.)

(Signature of witness.)

STATE OF —, COUNTY OF —.

At the (city) of —, in the said county, on this — day of —, 1—, personally appeared before me the above named —, and made oath that the foregoing deposition, by him subscribed, contains the truth, the whole truth and nothing but the truth.

The said deposition is taken at the request of —, to be used upon the hearing of an interference between the claims of the said — and those of —, before the commissioner of patents of the United States, on the — day of — next. The said — was duly notified as appears by the original notice hereto annexed, and attended by —, his counsel.¹

I. P.

(Justice of the Peace.)

Indorsed: —

I hereby certify that the depositions of, etc., relating to the matter of the interference between — and —, were taken, sealed up and addressed to the commissioner of patents, by me.

(Signature and title.)

1. Whenever an application is made of the commissioner, would interfere for a patent which, in the opinion with any pending application, or

with any unexpired patent, he shall give notice thereof to the applicants, or applicant and patentee, as the case may be, and shall direct the primary examiner to proceed to determine the question of the priority of invention. And the commissioner may issue a patent to the party who is adjudged the prior inventor, unless the adverse party appeals from the decision of the primary examiner, or of the board of examiners in chief, as the case may be, within such time, not

less than twenty days, as the commissioner shall prescribe. (U. S. R. S., § 4904.)

The commissioner of patents may establish rules for taking affidavits and depositions required in cases pending in the patent office, and such affidavits and depositions may be taken before any officer authorized by law to take depositions to be used in the courts of the United States, or of the State where the officer resides. (Id., § 4905.)

No. 926.

Amendments to specification.

I, —, hereby amend my specification, filed —, I —, in the matter of my application for a patent upon (stating briefly) as follows: (Stating amendments by reference to line and page of specification.)

A. B.

Witnesses:

C. D.

E. F.

No. 927.

Appeal to the examiners in chief

To the Commissioner of Patents:

In conformity with section — of the Revised Statutes of the United States, I hereby make application for an appeal from the decision of the primary examiner in the matter of my application for a patent for an improvement in (describe invention), rejected a second time on the — day of —, I —, and request that the same may be heard by the examiner in chief.¹

Respectfully,

A. B.

1. As to appeals by applicants for patents or their reissue, see sections 4909-4914 of the Revised Statutes of the United States. As to appeal in interference proceeding, see id., section 4904.

CHAPTER XXXIII.

Forms Relating to Army and Navy Pensions.

TITLE I.

GENERAL FORMS OF DECLARATIONS.

(U. S. R. S., § 4714.)

- No. 928. Declaration for original invalid pension.
 929. Same for the increase of an invalid pension.
 930. Same for original pension for a widow.
 931. Same of a pensioned widow for increase of pension.
 932. Same for pension of children under sixteen years of age.
 933. Same of guardian for increase of pension to pensioned children.
 934. Same for original pension of a mother.
 935. Same for original pension of a father.
 936. Same for pension of dependent brothers and sisters.

No. 928.

Declaration for original invalid pension.

STATE OF —, }
 County of —, } ss.:

On this — day of —, A. D. one thousand eight hundred and — —, personally appeared before me, — —, of the — —, a court of record within and for the county and State aforesaid, — —, aged — years, a resident of the — of —, county of —, State of —, who, being duly sworn according to law, declares that he is the identical — who was enrolled on the — day of —, 1—, in company —, of the — regiment of —, commanded by — —, and was honorably discharged at —, on the — day of —, 1—; that his personal description is as follows: Age, — years; height, — feet — inches; complexion, —; hair, —; eyes, —. That

While a member of the organization aforesaid, in the service and in the line of his duty, at —, in the State of —, on or about the — day of —, 1—, he (here state name or nature of disease, or the location of wound or injury. If disabled by disease, state fully its causes; if by wound or injury the precise manner in which received.) That he was treated in hospital as follows: (here state the name or numbers and the localities of all hospitals in which treated, and the dates of treatment.) That he has — been employed in the military or naval service otherwise than as stated above (here state what the service was, whether prior or subsequent to that stated above, and the dates at which it began and ended). That since leaving the service this applicant has resided in the — of —, in the State of —, and his occupation has been that of a —. That prior to his entry into the service above named he was a man of good, sound physical health, being when enrolled a —. That he is now — disabled from obtaining his subsistence by manual labor, by reason of his injuries above described, received in the service of the United States; and he therefore makes this declaration for the purpose of being placed on the invalid-pension roll of the United States.

He hereby appoints — —, of —, State of —, his true and lawful attorney to prosecute his claim. That he has — received — applied for a pension. That his post-office address is —, county of —, State of —.¹

— —.
(Claimant's signature.)

Attest:

— —.
— —.

Also personally appeared — —, residing at — —, and — —, residing at — —, persons whom I certify to be respectable and entitled to credit, and who, being by me duly sworn, say they were present and saw — —, the claimant, sign his name (or, make his mark) to the foregoing declaration; that they have every reason to believe, from the appearance of said claimant and their acquaintance

with him, that he is the identical person he represents himself to be, and that they have no interest in the prosecution of this claim.

_____.
_____.
_____.

(Signatures of witnesses.)

Sworn to and subscribed before me, this ____ day of ____, A. D. 1____; and I hereby certify that the contents of the above declaration, etc., were fully made known [L. S.] and explained to the applicant and witnesses before swearing, including the words ____ erased, and the words ____ added; and that I have no interest, direct or indirect, in the prosecution of this claim.

_____.
_____.
_____.

(Signature.)

(Official character.)

1. The provisions of the U. S. Revised Statutes on the subject of pensions are contained in title LVII of those statutes (§§ 4692-4791). As to declarations under those statutes, see § 4714, id. The pension laws in force prior to December, 1873, were revised and consolidated by title LVII, above mentioned. In title I of this chapter are given the forms of pension declarations required in the case of applications by soldiers and sailors and their relatives, other

than soldiers and sailors of the war of 1812, of the Mexican war, and under the act of June 27, 1890. In the remaining titles of this chapter are given the pension declarations of the three last mentioned classes.

Under section 4748 of U. S. Revised Statutes, forms and instructions were prepared and published by the commissioner of pensions, with which the forms contained in this chapter correspond.

No. 929.

Declaration for the increase of an invalid pension.

STATE OF _____, }
County of _____, } ss.:

On this ____ day of ____, A. D. one thousand eight hundred and ____ ____, personally appeared before me, _____, the same being a court of record within and for the county and State aforesaid, _____, aged ____ years, a

resident of —, county of —, State of —, who, being duly sworn according to law, declares that he is a pensioner of the United States, duly enrolled at the — pension agency, at the rate of — dollars per month, by reason of disability incurred in the — service of the United States while —;¹ that his present physical condition is such that he believes himself entitled to receive an increased pension; and that he herewith returns his present pension certificate.

He further declares that he is disabled in the following manner, to wit: —;² that he appoints — — his true and lawful attorney to prosecute his claim; that his residence is No. —, in — street, of —, county of — and State of —; and his post-office address is —.

(Claimant's signature.)

Attest:

Also personally appeared, etc. (as in form No. 928).

(Signatures of witnesses.)

Sworn to and subscribed before me, this, etc. (as in form No. 928.)

[L. S.]

(Signature.)

(Official character.)

1. Company and regiment, if in which pension was originally allowed; how far incapacitated for the army; and vessel, etc., if in the navy; manual labor, or dependent upon

2. Set forth extent of present disability as sequence of disability for the personal aid or attendance of others.

No. 930.

Declaration for original pension for a widow

STATE OF —, }
County of —, } ss.:

On this — day of —, A. D. one thousand — hundred and — —, personally appeared before me, —

—, the same being a court of record within and for the county and State aforesaid, — —, aged — years, who, being sworn according to law, makes the following declaration, in order to obtain the pension provided by acts of congress granting pensions to widows: That she is the widow of — —, who — under the name of — —, at —, on the — day of —, A. D. 1—, in —,¹ in the war of —, who —,² on the — day of —, A. D. 1—, who bore at the time of his death the rank of —, in —,³ that she was married under the name of — —, to said — —, on the — day of —, A. D. 1—, by — —, at —, there being no legal barrier to such marriage; that neither she nor her husband had been previously married —;⁴ that she has to the present date remained his widow; that the following are the names and dates of birth of all his legitimate children yet surviving who were under sixteen years of age at the father's death, to wit:

HIS BY HERSELF.⁵

— —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.

HIS BY A FORMER MARRIAGE.

— —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.

That she had not abandoned the support of any of his children, but that they are still under her care or maintenance —;⁶ that she has not in any manner been engaged in, or aided or abetted, the rebellion in the United States; that — prior application has been filed —;⁷ that she hereby appoints — — her attorney to prosecute her claim; that her residence is No. — — street, —, and that her post-office address is —.

— —.
 (Claimant's signature.)

Attest:

— —.
 — —.

Also personally appeared — —, residing at No. — —, in — — street, in — —, and — — — —, residing at No. — — in — — street, in — —, persons whom I certify to be respectable and entitled to credit, and who, being by me duly sworn, say that they were present and saw — —, the claimant, sign her name (or, make her mark) to the foregoing declaration; that they have every reason to believe, from the appearance of said claimant and their acquaintance with her, that she is the identical person she represents herself to be, and that they have no interest in the prosecution of this claim.

— —.
— —.

(Signatures of witnesses.)

Sworn to and subscribed before me, this — — of — —, A. D. 1—; and I hereby certify that the contents of the above declaration, etc., were fully made known and [L. S.] explained to the applicant and witnesses before swearing, including the words — — erased, and the words — — added; and that I have no interest, direct or indirect, in the prosecution of this claim.

— —.
(Signature.)

— —.
(Official character.)

1. State company and regiment, if in army; or vessel and rank, if in navy.
2. State nature of wounds and all circumstances attending them, or the disease and manner in which it was incurred, in either case showing soldier's death to have been the sequence.
3. "In the service aforesaid," or otherwise.
4. If either have been previously married, so state, and give date of death or divorce of former spouse.
5. If the husband left no child or children by the applicant, or by a former wife, the fact should be stated.
6. For such children as are not under her care claimant should account.
7. If prior application has been filed, either by soldier or widow, so state, giving number assigned to it.

No. 931.

Declaration of a pensioned widow for increase of pension.

STATE OF —, }
County of —, } ss.:

On this — day of —, A. D. one thousand — hundred and — —, personally appeared before me, — —, the same being a court of record within and for the county and State aforesaid, — —, a resident of —, county of —, in the State of —, aged — years, who, being duly sworn according to law, makes the following declaration in order to obtain the pension provided by acts of congress increasing the pensions of widows: That she is the widow of — —, who was a —¹ in — in the war of —; that on account of his death she has been granted a pension of — dollars per month, in accordance with a certificate numbered —, bearing date — —, and which is herewith returned; that she has not remarried since the death of her husband above named; that the following are the names and dates of births of all his legitimate children yet surviving, and who were under sixteen years of age at the father's death, to wit:

HIS BY HERSELF.

— —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.

HIS BY A FORMER MARRIAGE.

— —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.

That she has not abandoned the support of any one of his children, but that they are still under her care or maintenance —;² that she hereby appoints — — her attorney to prosecute her claim; that her residence is at No. —, in

— street, in the — of —, county of —, State of —;
and that her post-office address is —.

—
(Claimant's signature.)

Attest :

—.

—.

Also personally appeared, etc. (as in form No. 930).

—.

—.

(Signatures of witnesses.)

Sworn to and subscribed before me, this, etc. (as in form No. 930.)

[L. S.]

—.

(Signature.)

—.

(Official character.)

1. State company and regiment, if in army; or vessel and rank, if in navy. 2. For such children as are not under her care claimant should account.

No. 932.

Declaration for pension for children under sixteen years of age.

STATE OF —, }
County of —, } ss.:

On this — day of —, A. D. one thousand — hundred and —, personally appeared before me, —, the same being a court of record within and for the county and State aforesaid, —, a resident of —, county of —, in the State of —, aged — years, who, being duly sworn according to law, makes the following declaration, in order to obtain the pension provided by acts of congress for children under sixteen years of age: That — is the only legal guardian of —, legitimate children of —, who, —, under the name of —, at —, on the — day of —, A. D. 1—, —, in the war of —, who died — at —, on the — day of —, A. D. 1—, and who bore at the time of his death the rank

of —, in —;⁴ that he left — widow surviving —;⁵ that the above named are the only surviving legitimate children of said — — who were under sixteen years of age at the time of his death, of whom — —;⁶ that said children were the issue of said soldier as follows, the dates of their birth being as hereinafter stated:

— —, of soldier by — —, born —, 1—. ⁷
 — —, of soldier by — —, born —, 1—.
 — —, of soldier by — —, born —, 1—.
 — —, of soldier by — —, born —, 1—.
 — —, of soldier by — —, born —, 1—.
 — —, of soldier by — —, born —, 1—.
 — —, of soldier by — —, born —, 1—.
 — —, of soldier by — —, born —, 1—.
 — —, of soldier by — —, born —, 1—.

That the father was married under the name of — —, to — —,⁸ there being no legal barrier to such marriage; that the said children have not aided or abetted the rebellion; and that — prior application has been filed;⁹ that declarant hereby appoints — — h — attorney to prosecute the above claim; that h — residence is at No. — — street, in the — of —, county of —, State of —; and that h — post-office address is —

— —.
 (Claimant's signature.)

Attest:

— —.
 — —.

Also personally appeared, etc. (as in form No. 928).

— —.
 — —.
 (Signatures of witnesses.)

Sworn to and subscribed before me, this, etc. (as in form No. 928).

[L. S.]

— —.
 (Signature.)

— —.
 (Official character.)

1. "Was enlisted," "drafted" or otherwise, as the case may be.
2. State company and regiment, if in army; or vessel, etc., if in navy.

3. State nature of wounds and all circumstances attending them, or the disease and manner in which it was incurred, in either case showing soldier's death to have been the sequence.

4. "In the service aforesaid," or otherwise.

5. If widow survived, so state, giving her name, and the date of her death or other facts divesting her title.

6. If any have died, state date of death.

7. State names of children and of their mothers, and dates of birth.

8. If more than once married, so state, giving names and dates and parties officiating.

9. If either soldier, widow or guardian of children have previously applied, so state, giving date and number of application.

No. 933.

Declaration of guardian for increase of pension to pensioned children.

STATE OF —, { ss.:
County of —, }

On this — day of —, A. D. one thousand — hundred and —, personally appeared before me, —, the same being a court of record within and for the State and county aforesaid, —, a resident of —, county of —, in the State of —, aged — years, who, being duly sworn according to law, makes the following declaration in order to obtain the benefit of the provisions of acts of congress increasing the pension of orphans: That — is the only legal guardian of —, legitimate children of —, who was —¹; that on account of his death they have been granted pension in accordance with the certificate numbered —, bearing date —, and which is herewith returned; and that the names and date of birth of all his legitimate children yet surviving, who were under sixteen years at the date of the father's death, are as follows:

—, of soldier by —, born —, 1—. ²
—, of soldier by —, born —, 1—.
—, of soldier by —, born —, 1—.
—, of soldier by —, born —, 1—.
—, of soldier by —, born —, 1—.
—, of soldier by —, born —, 1—.
—, of soldier by —, born —, 1—.
—, of soldier by —, born —, 1—. ²

That — hereby appoints — — h— attorney to prosecute the above claim, that h— residence is at No. —, in — street, in the — of —, county of —, State of —; and that h— post-office address is —.

Attest :

(Claimant's signature.)

— —.
— —.

Also personally appeared, etc. (as in form No. 928).

— —.
— —.

(Signatures of witnesses.)

Sworn to and subscribed before me, this, etc. (as in form No. 928).

[L. S.]

(Signature.)

(Official character.)

1. State rank, company and regiment, if in army; or rank, vessel, etc., if in navy. 2. State names of children and their mothers, and dates of birth.

No. 934.

Declaration for an original pension of a mother.

STATE OF —, }
County of —, } ss.:

On this — day of —, A. D. one thousand — hundred and — —, personally appeared before me, — —, the same being a court of record within and for the county and State aforesaid — —, a resident of — —, county of —, in the State of —, aged — years, who, being duly sworn according to law, makes the following declaration, in order to obtain the pension provided by acts of congress granting pensions to dependent mothers: That she is the —¹ of —, and mother of —, who —² under the name of —, at —, on the — day of —, A. D. 1—, in —,³ in the war of —, who —⁴ on the — day of —, A. D. 1—; that said son — left neither widow nor

child under sixteen years of age surviving; that she was —⁵ dependent upon said son for support; that her husband, the aforesaid —, aged — years, —,⁶ that there were surviving, at date of said son's death, his brothers and sisters, who were under sixteen years of age, as follows:

— —, born —, 1 —.
 — —, born —, 1 —.
 — —, born —, 1 —.
 — —, born —, 1 —.

That she has not heretofore received — applied for a pension —;⁷ that she has not aided or abetted the rebellion; that she hereby appoints — — her attorney to prosecute the above claim; that her residence is at No. —, in — street, in the — of —, county of —, State of —; and that her post-office address is —.

Attest:

— —.
 (Claimant's signature.)

— —.
 — —.

Also personally appeared — —, etc. (as in form No. 930).

— —.
 — —.

(Signatures of witnesses.)

Sworn to and subscribed before me, this, etc. (as in form No. 930).

[L. S.]

— —.
 (Signature.)

— —.
 (Official character.)

1. "Wife" or "widow.
2. "Enlisted," "was drafted," etc.
3. State company and regiment, if in the army; and vessel, etc., if in the navy.
4. State nature of wounds and all circumstances attending them, or the disease and manner in which it was incurred, in either case showing the soldier's death to have been the sequence; also service and rank at time of death.
5. "Wholly" or "in part."
6. If the husband is dead, so state, giving date of death; also whether applicant has remarried. If still living, his inability to support applicant should be accounted for.
7. If either she or the soldier has previously applied, so state, giving number of claim.

No. 935.

Declaration for an original pension of a father.

STATE OF —, }
 County of —, } ss.:

On this — day of —, A. D. one thousand — hundred and — —, personally appeared before me, — —, the same being a court of record within and for the county and State aforesaid, — —, aged — years, who, being duly sworn according to law, makes the following declaration, in order to obtain the pension provided by acts of congress granting pensions to dependent fathers: That he is the father of — —, who — under the name of — —, at —, on the — day of —, A. D. 1—, in —,¹ in the war of —, who —,² on the — day of —, A. D. 1—, who bore at the time of his death the rank of — in —,³ that his son, — —, left neither widow nor child under sixteen years of age surviving; that the declarant was married to the mother of said son at —, on the — of —, A. D. 1—, by — —; that he was —⁴ dependent upon said son for support; that the mother of said son died at —, on the — day of —, A. D. 1—; that there were surviving, at the date of said son's death, his brothers and sisters, who were under sixteen years of age, as follows:

— —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.
 — —, born —, 1—.

That he has not heretofore received — applied for a pension —;⁵ that he has not aided or abetted the rebellion; that he hereby appoints — — his attorney to prosecute the above claim; that his residence is at No. —, in — street, in the — of —, county of —, State of —, and that his post-office address is —.

Attest:

(Claimant's signature.)

— —.
 — —.

Also personally appeared, etc. (as in form No. 928).

_____.
_____.
_____.

(Signatures of witnesses.)

Sworn to and subscribed before me, this, etc. (as in form No. 928).

[L. S.]

_____.
_____.
_____.

(Signature.)

(Official character.)

1. State company and regiment, if in the army; and vessel, etc., if in the navy.

2. State nature of wounds and all circumstances attending them, or the disease and manner in which it was incurred, in either case showing the soldier's death to have been the sequence.

3. State company and regiment, if in the army; and vessel, etc., if in the navy.

4. "Wholly" or "in part."

5. If either he, the mother, or the soldier has previously applied, so state, giving number of claim.

No. 936.

Declaration for pension of dependent brothers and sisters.

STATE OF _____, }
County of _____, } ss.:

On this _____ day of _____, A. D. one thousand _____ hundred and _____, personally appeared before me _____, the same being a court of record within and for the county and State aforesaid, _____, a resident of _____, county of _____, in the State of _____, aged _____ years, who, being duly sworn, according to law, makes the following declaration, in order to obtain the pension provided by acts of congress for dependent brothers and sisters: That _____ is the only legal guardian of _____, brothers and sisters of _____, who _____,¹ under the name of _____, at _____, on the _____ day of _____ at _____, A. D. 1____,² in the war of _____, who died _____,³ at _____, on the _____ day of _____, A. D. 1____, and who bore at the time of his death the rank of _____ in _____;⁴ that he left neither widow, minor child, nor _____;⁵ that the above named are the only legitimate brothers and sisters, including those of the half blood, of the said deceased _____, _____,

surviving, who were under sixteen years of age at the time of his death, and were dependent upon him, of whom —;⁶ that said brothers and sisters were the issue of the parents of said soldier, as follows, the dates of their births being as herein stated :

—, child of — — and — —, born —, 1 —.⁷
 —, child of — — and — —, born —, 1 —.
 —, child of — — and — —, born —, 1 —.
 —, child of — — and — —, born —, 1 —.
 —, child of — — and — —, born —, 1 —.

That the parents were married under the names of —,⁸ there being no legal barrier to the marriage ; that none of said brothers and sisters have aided or abetted the rebellion ; that — prior application has been filed —;⁹ that — hereby appoints — — h— attorney to prosecute the above claim ; that h— residence is at No. —, in — street, in the — of —, county of —, State of —, and that h— post-office address is —.

— —.
 (Claimant's signature.)

Attest :

— —.
 — —.

Also personally appeared, etc. (as in form No. 928).

— —.
 — —.

(Signatures of witnesses.)

Sworn to and subscribed before me, this, etc. (as in form No. 928.)

[L. S.]

— —.

(Signature.)

— —.

(Official character.)

1. "Was enlisted," "drafted," or otherwise as the case may be.
2. State company and regiment, if in army; or vessel, etc., if in navy.
3. State nature of wounds and all circumstances attending them, or the disease and manner in which it was
- incurred, in either case showing soldier's death to have been the sequence.
4. "In the service aforesaid," or otherwise, as may have been the case.
5. If mother or father survived the soldier, and subsequently died, so

state, giving date of death; otherwise add, "mother nor father surviving."

6. If any have died, state date of death.

7. State names of children and of both parents; also date of birth.

8. Give names of parents and places and dates of marriages.

9. If either soldier or his father or mother have previously applied, so state, giving date and number of application.

TITLE II.

FORMS OF DECLARATIONS OF SOLDIERS, ETC., OF WAR OF 1812.

No. 937. Declaration of soldier, etc., of war of 1812 for service pension.

938. Same of widow for service pension.

No. 937.

Declaration of soldier of war of 1812 for service pension.

STATE OF —, }
County of —, } ss.:

On this — day of —, A. D. one thousand — hundred and — —, personally appeared before me, — —, the same being a court of record within and for the county and State aforesaid, — —,¹ aged — years, a resident of —, in the county of —, in the State of —, who, being duly sworn according to law, declares that he is the identical —,² who served under the name of — —,³ as a —,⁴ in the company commanded by Captain — —, in the — regiment of —, commanded by — —, in the war of 1812; that he —⁵ at —, on or about the — day of —, A. D. 1 —, for the term of —, and continued in actual service in said war for the term of —,⁶ and was honorably discharged at —, on the — day of —, A. D. 1 —; that since his discharge from said service he has resided as follows, viz.: — —.⁷ The following was his description at the time of his enlistment, viz.: — —.⁸ He makes this declaration for the purpose of obtaining the pension to which he may be entitled under sections 4736 to 4740, inclusive, Revised Statutes, and the act approved March 9, 1878, and hereby appoints — —, of —, his lawful attorney, — to prosecute his claim. He also declares that he has heretofore

made — application for — — —⁹, and that his residence is No. — — — street, city (or, town) of — —, county of — —, and State of — —, and that his post-office address is — —.

— — —.
(Signature of claimant.)

Attest:

— — —.
— — —.

Also personally appeared — — —, aged — — years, residing at No. — — — street, in — —, and — — —, aged — — years, residing at No. — — — street, in — —, persons whom I certify to be respectable and entitled to credit, and who, being by me duly sworn, say that they have known the said — — — for — — years and — — years respectively; that they were present and saw him sign his name (or, make his mark) to the foregoing declaration; that they have every reason to believe, from the appearance of said claimant and their acquaintance with him, that he is the identical person he represents himself to be; and that they further say that they are able to identify him as the identical person who rendered the service alleged in the above application (in the company of Captain — — —, in the regiment of — — —, in the war of — —) by the following named facts and circumstances, viz.: — — —;¹⁰ and that they have no interest in the prosecution of this claim.

— — —.
— — —.

(Signatures of witnesses.)

Sworn to and subscribed before me, this etc. (as in form No. 928.)

[L. S.]

— — —,
— — —.

(Official character.)

1. Here allege full name of the claimant.

2. Here allege the name of the claimant again.

3. Here allege the exact name under which the service was rendered.

4. Here allege the rank under which the service was rendered.

5. Here state "enlisted," "volunteered," or "was drafted," as the case may be.

6. Here allege the number of days or months of service rendered by the

claimant; fourteen days being the shortest period for which service pension is by law allowed, unless the claimant was actually engaged in a battle. If the claim is made for battle service, the blank should be so varied as to allege such service in addition to the allegation of term of service.

7. Here state all the places of residence; if in a city, giving the street and number, and from and to what dates he resided at each place.

8. Here let a full description follow, giving age, occupation, birth-place, height, color of hair, eyes and complexion, and any other particulars as to description.

9. If any application for bounty land or pension has previously been made, state the facts here, giving the date and number, if possible, and designating whether it was a claim for bounty land or pension, and whether a warrant for the land or a

certificate for the pension was ever issued.

10. Here name all the facts and circumstances which enable the witnesses to swear that they know the applicant to be the identical person who rendered the service alleged.

If the applicant was a regimental or staff officer, or served in the navy, the declaration must be varied according to the facts of the case.

If the claimant was discharged in consequence of disability incurred by the service, or if he was in captivity with the enemy, he must vary his declaration so as to set forth the facts of the case.

All services rendered by the soldier in the war for which claim is made, or in any other war, with the names of officers in each service, must be given in the application.

If the service was rendered as a substitute, the name of the principal for whom the substitute served should be stated.

No. 938.

Declaration of widow of soldier of war of 1812 for service pension.

STATE OF —, }
County of —, } ss.:

On this — day of —, A. D. one thousand — hundred and — —, personally appeared before me, — —, the same being a court of record within and for the county and State aforesaid, — —,¹ aged — years, a resident of —, in the State of —, who, being duly sworn according to law, declares that she is the widow of — —,² deceased, who was the identical —³ who served under the name of — —,⁴ as a —⁵ in the company commanded by Captain — —, in the — regiment of —, commanded by — —, in the war of 1812; that her said husband —⁶ at — on or about the — day of

—, A. D. 1—, for the term of —, and continued in actual service in said war for the term of —,⁷ and whose services terminated by reason of —,⁸ at —, on the — day of —, A. D. 1—. She further states that the following is a full description of her said husband at the time of his enlistment, viz.: — —.⁹ She further states that she was married to the said — —, at the city (or, town) of —, in the county of —, and in the State of —, on the — day of —, A. D. 1—, by one — —,¹⁰ who was a —,¹¹ and that her name before her said marriage was — —; and she further states that — —,¹² and that her said husband — —,¹³ died at —, in the State of —, on the — day of —, A. D. 1—, and that she has not again married; and she further declares that the following have been the places of residence of herself and her said husband since the date of his discharge from the army, viz.: — —.¹⁴ She makes this declaration for the purpose of obtaining the pension to which she may be entitled under sections 4736 to 4740, inclusive, Revised Statutes, and the act of March 9, 1878, and hereby appoints — —, of —, her true and lawful attorney to prosecute her claim; and she further declares that she has heretofore made — application for — —,¹⁵ and that her residence is No. —, — street, city (or, town) of —, county of —, State of —, and that her post-office address is —.

— —.

(Signature of the claimant.)

Attest:

— —.
— —.

Also personally appeared — —, aged — years, residing at No. —, — street, in —, and — —, aged — years, residing at No. —, — street, in —, persons whom I certify to be respectable and entitled to credit, and who, being by me duly sworn, say that they have known the said — — for — years and — years, respectively; that they were present and saw her sign her name (or, make her mark) to the foregoing declaration; that they have

every reason to believe, from the appearance of said claimant and their acquaintance with her, that she is the identical person she represents herself to be; and they further say that they are able to identify her as the person who was the wife of the identical — —, ¹⁶ who rendered the service alleged in the above application (in the company of Captain — —, in the — — regiment of — —, in the war of — —) by the following named facts and circumstances, viz.: — —, ¹⁷ and that they have no interest in the prosecution of this claim.

— —.
— —.

(Signatures of witnesses.)

Sworn to and subscribed before me, this, etc. (as in form No. 930.)

[L. S.]

— —.
— —.

(Official character.)

1. Here allege full name of applicant.

2. Here allege full name of soldier.

3. Here allege again the name of soldier.

4. Here allege the name under which the soldier served.

5. Here allege the rank under which the soldier served.

6. Here state "enlisted," "volunteered," or "was drafted," as the case may be.

7. Here state the number of days or months of service rendered by the soldier; fourteen days being the shortest period for which service pension is by law allowed, unless the soldier was actually engaged in a battle. If the claim is made for battle service, the blank should be so varied as to allege such service, in addition to the allegation of term of service.

8. Here insert the words "an honorable discharge," or "death," as the case may be.

9. Here let a full description of soldier follow, giving age, occupation, birthplace, height, color of hair, eyes and complexion, and any other particulars as to description.

10. Here allege the name of the person who performed the marriage ceremony.

11. Here state the official character of the person who performed the ceremony; *i. e.*, whether a minister of the gospel, or a justice of the peace, etc.

12. Here state whether the claimant or her husband (the soldier) had been previously married; and if either had, the name of the former husband or wife should be stated; and the date and place of the death of, or divorce from, the former consort should be alleged.

13. Here insert the name of the husband on account of whose service and death the claim is made.

14. Here state all the places of residence; if in a city, giving the

street and number; and from and to what dates he resided at each place.

15. If any application for bounty land or pension has previously been made, state the fact here, giving the date and number, if possible, and the act of congress under which the claim was made, and designating whether it was a claim for bounty land or pension, and whether a warrant for the land or certificate for the pension was ever issued.

16. Here insert the name of the soldier.

17. Here name all the facts and

circumstances which enable the witnesses to swear, from a personal knowledge, that the claimant is the widow of the identical person who rendered the service alleged in the claim.

All services rendered by the soldier in the war for which claim is made, or in any other war, with the names of officers in each service, must be given in the application.

If the service was rendered as a substitute, the name of the principal for whom the substitute served should be given.

TITLE III.

FORMS OF DECLARATIONS IN CASE OF MEXICAN WAR PENSIONS.

(Act of Congress of January 29, 1887.)

No. 939. Declaration of survivor of Mexican war.

940. Affidavit of witness to accompany such declaration.

941. Affidavit of claimant's infirmity to accompany such declaration.

942. Declaration of widow of soldier of Mexican war.

943. Affidavit of witness, widow's pension.

No. 939.

Declaration of survivor of Mexican war for pension.

STATE OF —, }
County of —, } ss.:

On this — day of —, A. D. one thousand — hundred and —, personally appeared before me, —, a resident of —, in the county of —, in the State of —, who, being by me first duly sworn according to law, deposes and says:

I am the identical —, who served under the name of —, as a — in the company commanded by Captain —, in the — regiment of — (if in naval service, name vessel, etc.), commanded by —, in the war

with Mexico; that I enlisted at —, on or about the — day of —, A. D. 1—, for the term of —, and was honorably discharged at —, on the — day of —, A. D. 1—.

First group of facts which will entitle to pension.

That being duly enlisted, as aforesaid, I actually served sixty days with the army or navy of the United States in Mexico, or on the coast or frontier thereof, or en route thereto, in the war with that nation, which service was as follows :
— —.

(a) That I am — years of age, having been born at —, on the — day of —, 1—.

(or, b) That I am dependent on others than those legally bound for my support for my livelihood; that I have been so dependent since —, and that the — upon whom I am dependent is —, of —, who has afforded me the following support: (Here describe what has been done for your support.)

(or, c) That I am disabled by reason of —, which said disability was not incurred while in any manner voluntarily engaged in aiding or abetting the late rebellion against the authority of the United States, but that said disability was incurred at —, on or about the — day of —, A. D. 1—, in manner as follows: — —.

Second group of facts which will entitle to pension.

That being so actually enlisted as aforesaid —

(a) That I am — years of age, having been born at —, on the — day of —, A. D. 1—.

(or, b) I was actually engaged in battle with the enemy in the war with Mexico, to wit: In the battle of —, on the — day of —, 1—.

(or, c) That I am dependent on others than those legally bound for my support for my livelihood; that I have been so dependent since —, and that the — upon whom I am dependent is —, of —, who has afforded me the following support: (Here describe what has been done for your support.)

(or, *d*) That I am disabled by reason of —, which said disability was not incurred while in any manner voluntarily engaged in aiding or abetting the late rebellion against the authority of the United States, but that said disability was incurred at —, on or about the — day of —, 1—, in manner as follows: — —.

Third group of facts which will entitle to pension.

I was personally named in a resolution of congress for a specific service in said war, to wit: In the resolution of the — day of —, 1—.

(a) That I am — years of age, having been born at —, on the — day of —, 1—.

(or, *b*) That I am dependent on others than those legally bound for my support for my livelihood; that I have been so dependent since —, and that the — upon whom I am dependent is — of —, who has afforded me the following support: (Here describe what has been done for your support.)

(or, *c*) That I am disabled by reason of —, which said disability was not incurred while in any manner voluntarily engaged in aiding or abetting the late rebellion against the authority of the United States, but that said disability was incurred at —, on or about the — day of —, 1—, in manner as follows: — —.

That I am — married; that the maiden name of my wife was — —, to whom I was married at —, in the State of —, on the — day of —, A. D. 1—; that my wife is now —, having died on the — day of —, A. D. 1—, at —, in the State of —; that I have — since remarried; that the name of my present wife is — —.

That in support and proof of my right to pension I tender herewith, under the regulations prescribed by the secretary of the interior, the following evidence: — — and the affidavits of — —.

That I have — heretofore made application for pension or bounty land, which said claim is No. —.

That I am — a pensioner of the United States under certificate No. —, at the rate of — dollars per month; that

since my discharge from said service I have resided as follows, to wit: — — — ; that I am not laboring under any political disabilities imposed by the fourteenth amendment to the Constitution of the United States.

Witnesses:

(Claimant sign here.)

— — —
— — —

STATE OF — — —, } ss.:
County of — — —, }

Before me, — — —, a clerk of a court of record, on this — — day of — —, A. D. 1 — —, personally appeared — — —, known to me as the person described in, and who signed and executed the foregoing declaration for pension, and whom I certify to be a credible person and of good repute for truth and veracity in the community in which he lives, who, being by me first duly sworn, deposes and says, that he has read (if claimant cannot read, read to him and so state in acknowledgment) the foregoing declaration, and knows the contents thereof, and that all of the facts therein stated are true.

[L. S.]

— — —,
— — —.

No. 940.

Affidavit of witness.

STATE OF — — —, } ss.:
County of — — —, }

Before me, a — — — in and for the county of — —, on this — — day of — —, A. D. 1 — —, personally appeared — — —, who, being by me first duly sworn, deposes and says:

I have known — — — for the space of — — years, and I was requested by said — — — to sign my name as a witness to the declaration for pension under the act of January 29, 1887, sworn to by him on the — — day of — —, A. D. 1 — —; and that at his request I so signed my name as witness; that the said — — — is the identical person who signed the foregoing declaration, and who is therein described, and who was enlisted in the company of Captain — — —

in the regiment commanded by — —, in the Mexican war, as in the said declaration set out.

No. 1. That said — — actually served sixty days with the army or navy of the United States in Mexico, or on the coast or frontier, or en route thereto in the war with that nation; that I swear to these facts from knowledge obtained as follows: — —.

No. 2. That the said — — was actually engaged in a battle in said war, to wit: in the battle of — —, at — —, on the — — day of — —, A. D. 1—, and was honorably discharged, and these facts I swear to from knowledge obtained as follows: — —.

No. 3. That the said — — is disabled by reason of — —, which said disability was not incurred while the said — — was in any manner voluntarily engaged in, or aiding or abetting the late rebellion against the authority of the United States, but was incurred on or about the — — day of — —, A. D. 1—, at — —, and this fact I swear to from knowledge obtained as follows: — —.

No. 4. That the said — — is dependent in whole or in part for his support, and is incapacitated from the performance of manual labor, and I swear to the fact of dependence from knowledge obtained from and based upon the following facts: — —.

No. 5. That the said — — is sixty-two years of age, having been born on or about the — — day of — —, A. D. 1—, at — —, in the State of — —, and that I swear to these facts from knowledge obtained as follows: — —.

That I have no interest in the prosecution of this claim.¹

Subscribed and sworn to before me, this — — day of — —, A. D. 1—. And I hereby certify the person who signed and executed the foregoing affidavit to be a credible person, and of good repute for truth and veracity in the community in which — he lives, and that the contents of the above were fully made known to h— before signing.

[SEAL.]

1. The witness should strike out which he does not personally know all the allegations of this affidavit to be true.

No. 941.

**Affidavit of claimant's infirmity, etc., to accompany forms
Nos. 939, 942.**

STATE OF —, }
County of —, } ss.:

Before me, — —, a — —, an officer duly authorized to administer oaths for general purposes under the laws of the State of —, personally appeared — —, who being by me first duly sworn according to law, on this — day of —, A. D. 1—, makes oath as follows:

I am an applicant for pension as — of the Mexican war, under the provisions of the act of January 29, 1887, and being by reason of the infirmity of age unable to travel, the nearest court of record, or residence of any person having the custody of its seal, being — miles from my place of residence, I am unable to travel that distance, and therefore swear to my declaration before — —, a — —, an officer duly authorized to administer oaths for general purposes under the laws of the State of —.

— —.

Sworn to and subscribed before me, on this the — day of —, A. D. 1—.

[SEAL.]

— —.

STATE OF —, }
County of —, } ss.:

I certify that — —, before whom the acknowledgment of the foregoing affidavit was taken, is a duly qualified and acting — —, under the laws of the State of —, in and for the county of —, and that I am the officer under the laws of the State of — authorized to certify to his official character.

— —.
 — —.

No. 942.

Declaration of widow of soldier in Mexican war for pension.

STATE OF —, }
 County of —, } ss.:

On this — day of —, A. D. 1—, personally appeared before me, clerk of —, the same being a court of record in the State of —, a resident of —, in the county of —, in the State of —, who being by me first duly sworn according to law, deposes and says:

I am the widow of —, who served under the name of —, as a — in the company commanded by Captain —, in the — regiment of — (if in naval service, name of vessel, etc.), commanded by —, in the war with Mexico; that my said husband enlisted at —, on or about the — day of —, A. D. 1—, for the term of —; that I was married under my name of —, to my said husband, by —, on or about the — day of —, A. D. 1—, at —, in the State of —, and lived with my said husband from the date of my said marriage until the day of his death, to wit, the — day of —, A. D. 1—, when my said husband died at —, in the State of —, and that I have not since remarried; that there never was any legal impediment to said marriage.

No. 1. That my said husband, being duly enlisted as aforesaid, actually served sixty days with the army and navy of the United States in Mexico, or on the coast or frontier thereof, or en route thereto, in the war with that nation, which service was as follows: —, and was honorably discharged at —, on the — day of —, A. D. 1—.

No. 2. That my said husband was actually engaged in a battle in said war, to wit, in the battle of —, at —, on the — day of —, A. D. 1—, and was honorably discharged at — on the — day of —, A. D. 1—.

No. 3. That my said husband was personally named in a resolution of congress for a specific service in said war, to wit, in the resolution of the — day of —, A. D. 1—, and was honorably discharged at — on the — day of —, A. D. 1—.

No. 4. That I am — years of age, and that I was born on or about the — day of —, A. D. 1—, at —, in the State of —.

No. 5. That I am disabled by reason of — —, and the said disability was not incurred while I was in any manner voluntarily engaged in, or aiding or abetting the late rebellion against the authority of the United States.

No. 6. That I claim pension by reason of the fact that I am dependent in whole or in part for my support upon — —, not legally bound for my support, and that such dependence as alleged consists in this, to wit: — —.

That I have — heretofore made application for pension or bounty land, which said claim is numbered —.

That I am a pensioner of the United States as — — under certificate No. —, at the rate of — dollars per month.

That in support and proof of my right to pension, I tender herewith, under the regulations prescribed by the secretary of the interior, the following evidence: — —, and the affidavits of — —.

That since the death of my said husband I have resided at the following places, to wit: — —. That I am not laboring under any political disabilities imposed by the fourteenth amendment to the Constitution of the United States.

— —.
(Claimant's signature.)

Witnesses:

— —.
— —.

STATE OF —, }
County of —, } ss.:

Before me, — —, a clerk of a court of record, on this — day of —, A. D. 1—, personally appeared — —, known to me as the person described in, and who executed and signed the foregoing declaration for pension as widow of — —, and whom I certify to be a credible person and of good report for truth and veracity in the community in which she lives, who being by me first duly sworn, deposes and says that she has read (if claimant cannot read, read to her and

so state in acknowledgment) the foregoing declaration, and knows the contents thereof, and that all of the facts therein stated are true.

[L. S.] .

_____.
_____.

No. 943.

Affidavit of witness. (Widow's pension.)

STATE OF _____, }
County of _____, } ss.:

Before me, a _____ in and for the county of _____, on this _____ day of _____, A. D. 1____, personally appeared _____, who, being by me first duly sworn, deposes and says:

I have known _____ for the space of _____ years, and I was requested by said _____ to sign my name as a witness to the declaration for pension under the act of January 29, 1887, sworn to by her on the _____ day of _____, A. D. 1____; and that at her request I so signed my name as witness; that the said _____ is the identical person who signed the foregoing declaration, and who is therein described as the widow of _____, who enlisted in the company of Captain _____ (if in the naval service, give name of vessel), in the regiment commanded by _____, in the Mexican war, as in the said declaration set out; that the said _____ was married to the said _____ under the name of _____, by _____, on or about the _____ day of _____, A. D. 1____, at _____, in the State of _____, and lived with her said husband from the date of her said marriage until the date of his death, to wit: the _____ day of _____, A. D. 1____, when the said _____, husband of said _____, died at _____, in the State of _____, and that there was at no time any legal impediment to the said marriage, and that the said _____ has not since remarried; that the said _____, husband of said _____, claiming as widow, had _____ been previously married; that said _____, now claiming as widow, had _____ been previously married; and these facts I swear to from knowledge obtained as follows: _____.

No. 1. That the said _____, husband of said _____, actually served sixty days with the army or navy of the

United States in Mexico, or on the coast or frontier, or en route thereto, in the war with that nation; that I swear to these facts from knowledge obtained as follows: — —.

No. 2. That the said — —, husband of said — —, was actually engaged in a battle in said war, to wit: in the battle of — —, at — —, on the — — day of — —, A. D. 1—, and was honorably discharged, and these facts I swear to from knowledge obtained as follows: — —.

No. 3. That the said — — is disabled by reason of — —, which said disability was not incurred while the said — — was in any manner voluntarily engaged in, or aiding or abetting the late rebellion against the authority of the United States, but was incurred on or about the — — day of — —, A. D. 1—, at — —, and this fact I swear to from knowledge obtained as follows: — —.

No. 4. That the said — — is dependent in whole or in part for her support, and I swear to the fact of dependence from knowledge obtained from and based upon the following facts: — —.

No. 5. That the said — — is sixty-two years of age, having been born on or about the — — day of — —, A. D. 1—, at — —, in the State of — —, and that I swear to these facts from knowledge obtained as follows: — —.

That I have no interest in the prosecution of this claim.¹

— —.

Subscribed and sworn to before me, this, etc. (as in form No. 940).

[SEAL.]

— —,
— —.

1. The witness should strike out which he does not personally know all the allegations of this affidavit to be true.

TITLE IV.

FORMS UNDER ACT OF CONGRESS OF JUNE 27, 1890.

- No. 944. Declaration for invalid's pension, under act of 1890.
 945. Same for widow's pension.
 946. Same for children under sixteen years of age.
 947. Same for dependent mother's pension.
 948. Same for dependent father's pension.
 949. Same for soldier's children who are permanently helpless.

No. 94.

Declaration for invalid pension.

STATE OF —, }
 County of —, } ss.:

On this — day of —, A. D. one thousand — hundred and ninety—, personally appeared before me, a — within and for the county and State aforesaid, —, aged — years, a resident of the — of —, county of —, State of —, who being duly sworn according to law, declares that he is the identical — who was *enrolled* on the — day of —, 1—, in — (here state rank, company, and regiment in military service, or vessel if in the navy), in the service of the United States, in the war of the rebellion, and served at least ninety days, and was *honorably discharged* at —, on the — day of —, 1—. That he is — unable to earn a support by manual labor by reason of —. (Here name the disease or injuries from which disabled.) That said disabilities are not due to his vicious habits, and are to the best of his knowledge and belief of a permanent character. That he has — applied for pension under application No. —. That he is a pensioner under certificate No. —. (If a pensioner, the certificate number only need be given; if not, give the number of the former application, if one was made.) That he has — been employed in the military or naval service otherwise than as stated above. That

he makes this declaration for the purpose of being placed on the pension roll of the United States, under the provisions of the act of June 27, 1890. He hereby appoints — —, of — —, State of — —, his true and lawful attorney to prosecute his claim and receive a fee of \$—. That his post-office address is — —, county of — —, State of — —.¹

— —.
(Claimant's signature.)

Attest:

(1) — —.

(2) — —.

Also personally appeared — —, residing at — —, and — —, residing at — —, persons whom I certify to be respectable and entitled to credit, and who, being by me duly sworn, say they were present and saw — —, the claimant, sign his name (or, make his mark) to the foregoing declaration; that they have every reason to believe from the appearance of said claimant and their acquaintance with him for — — years and — — years, respectively, that he is the identical person he represents himself to be; and that they have no interest in the prosecution of this claim.²

(1) — —.

(2) — —.

(Signatures of witnesses.)

Sworn to and subscribed before me, this, etc. (as in form No 928.)

[L. S.]

— —.

(Signature.)

— —.

(Official character.)

(Indorsed):—

SOLDIER'S APPLICATION.

Name_____

Service_____

Address_____

Attorney.

Address_____

Date of execution.

1. The act of June 27, 1890, requires, in case of a soldier:

(1) An honorable discharge (but the certificate need not be filed unless called for).

(2) A minimum service of ninety days.

(3) A mental or physical disability of a permanent character not due to vicious habits. (It need not have originated in the service.)

(4) The rates under the act are graded from \$6 to \$12, proportioned to the degree of inability to earn a support, and are not affected by the rank held.

(5) A pensioner under prior laws may apply under this one, or a pensioner under this one may apply un-

der other laws, but he cannot draw more than one pension for the same period.

2. To be executed before any officer authorized to administer oaths for general purposes in the State, city or county where said officer resides. If such officer has a seal and uses it upon such paper, no certificate of a county clerk or prothonotary or clerk of a court shall be necessary; but when no seal is used by the officer before whom the declaration is executed, then, a clerk of a court of record or a county or city clerk shall affix his official seal thereto, and shall certify to the *signature* and *official character* of said officer.

No. 945.

Declaration for widow's pension, same act.

STATE OF —, }
 County of —, } ss.:

On this — day of —, A. D. one thousand eight hundred and ninety —, personally appeared before me, a —, of the — —, within and for the county and State aforesaid, — —, aged — years, a resident of the — of —, county of —, State of —, who, being duly sworn according to law, declares that she is the widow of — —, who enlisted under the name of — —, at — on the — day of —, A. D. 1—, in —. (here state rank, company and regiment, if in military service, or vessel, if in navy), and served at least ninety days in the late war of the rebellion, in the service of the United States, who was *honorably discharged* — and died —. (The cause of death need not be stated.)

That she was married under the name of — — to said — —, on the — day of —, 1—, by — —, at —, there being no legal barrier to said marriage —. (If there was a former marriage of claimant or her husband, state it here and how dissolved.)

That she has not remarried since the death of the said — —. (Name of soldier or sailor.)

That she is without other means of support than her daily labor; that the names and dates of birth of all the children now living under sixteen years of age of the (soldier) are as follows:

| | |
|------------------|------------------|
| — —, born —, 1—. | — —, born —, 1—. |
| — —, born —, 1—. | — —, born —, 1—. |
| — —, born —, 1—. | — —, born —, 1—. |

That she has heretofore applied for pension, and the number of her former application is —.

(Be careful to fill this part of the blank correctly.)

That her husband has — been employed in the military or naval service otherwise than as stated above.

That she makes this declaration for the purpose of being placed on the pension roll of the United States under the provisions of the act of June 27, 1890.

She hereby appoints — —, of —, State of —, her true and lawful attorney to prosecute her claim and receive a fee of \$—; that her post-office address is —, county of —, State of —.¹

— —.
(Claimant's signature.)

Attest :

(1) — —.

(2) — —.

Also personally appeared — —, residing at —, and — —, residing at —, persons whom I certify to be respectable and entitled to credit, and who, being by me duly sworn, say they were present and saw — —, claimant, sign her name (or, make her mark) to the foregoing declaration ; that they have every reason to believe from the appearance of said claimant and an acquaintance with her of — years and — years, respectively, that she is the identical person she represents herself to be, and that they have no interest in the prosecution of this claim.

(1) — —.

(2) — —.

(Signatures of witnesses.)

Sworn to and subscribed before me, this, etc. (as in form No. 930).²

— —
(Signature.)

— —.
(Official character.)

(Indorsed):—

WIDOW'S APPLICATION.

Claimant_____

Soldier_____

Service_____

Address :

Attorney_____

Address_____

1. The act of June 27, 1890, requires, in widow's case :

(1) That the soldier served at least *ninety days* in the war of the rebellion and was *honorably discharged*.

(2) Proof of soldier's death (death cause need not have been due to army service).

(3) That widow is "without other means of support than her daily labor."

(4) That widow was married to soldier prior to June 27, 1890, date of the act.

(5) That all pensions under this act commence from date of receipt of application in pension bureau.

2. To be executed before any officer authorized to administer oaths for general purposes in the State, city or county where said officer resides. If such officer has a seal and uses it upon such paper, no certificate of a county clerk or prothonotary or clerk of a court shall be necessary; but when no seal is used by the officer before whom the declaration is executed, then a clerk of a court of record or a county or city clerk shall affix his official seal thereto, and shall certify to the *signature* and *official character* of said officer.

No. 946.

Declaration for children under sixteen years of age.

STATE OF —, }
County of —, } ss.:

On this — day of —, A. D., one thousand eight hundred and ninety—, personally appeared before me, a —

of the —, in and for the county and State aforesaid, —, aged — years, who, being duly sworn according to law, makes the following declaration in order to obtain the pension provided by act of congress approved June 27, 1890: That — is the legal guardian of — —, legitimate child — of — —, who enlisted under the name of —, at —, on the — day of —, 1—, in — (here state rank, company, and regiment, if in the military service, or vessel, if in navy), and served at least ninety days in the war of the rebellion in the service of the United States, who was *honorably discharged* —, and died —. That he left — widow surviving him. (Here state date of death or of remarriage.) That the names and dates of birth of all the surviving children of the soldier under sixteen years of age are as follows:

— —, born —, 1—. — —, born —, 1—. — —, born —, 1—. — —, born —, 1—. — —, born —, 1—. — —, born —, 1—.

That the mother was married under the name of — — to — —, there being no legal barrier to such marriage. That the soldier has — been employed in the military or naval service otherwise than as stated above —. That the declarant hereby appoints — —, of —, State of —, true and lawful attorney to prosecute this claim, and receive a fee of \$—. That — post-office address is —, county of —, State of —.¹

— —.
(Claimant's signature.)

Attest:

(1) — —.

(2) — —.

Also personally appeared — —, residing at —, and — —, residing at —, persons whom I certify to be respectable and entitled to credit, and who, being duly sworn, say that they were present and saw — —, the claimant, sign — name (or, make — mark) to the foregoing declaration; that they have every reason to believe, from the appearance of said claimant and their acquaintance

with — for — years and — years, respectively, that — is the identical person — represents — to be; and that they have no interest in the prosecution of this claim.

(1) — —.

(2) — —.

(Signatures of witnesses.)

Sworn to and subscribed before me, this, etc. (as in form No. 930.)²

— —.

(Signature.)

— —.

(Official character.)

(Indorsed):—

MINOR CHILD'S APPLICATION.

Guardian_____

Claimants_____

Soldier_____

Service_____

Attorney_____

Address_____

1. The act of June 27, 1890, requires that in minor children's cases —

(1) That the soldier served at least ninety days in the war of the rebellion and was *honorably discharged*.

(2) Proof of soldier's death (cause need not have been due to army service), his marriage to mother, and proof of her death or divestment of title.

2. To be executed before any officer authorized to administer oaths for general purposes in the State,

city, or county where said officer resides. If such officer has a seal and uses it upon such paper, no certificate of a county clerk or prothonotary or clerk of a court shall be necessary; but when no seal is used by the officer before whom the declaration is executed, then a clerk of a court of record or a county or city clerk shall affix his official seal thereto, and shall certify to the *signature* and *official character* of said officer.

No. 947.

Declaration for dependent mother's pension.

STATE OF —, }
 County of —, } ss.:

On this — day of —, one thousand eight hundred and ninety —, personally appeared before me, a —, of the —, in and for the county and State aforesaid, —, aged — years, a resident of —, county of —, State of —, who, being duly sworn according to law, declares that she is the mother of — —, who enlisted under the name of — —, at —, on the — day of —, 1—, in — (here state rank, company, and regiment, if in military service, or vessel, if in navy) in the service of the United States, who died at —, on the — day of —, 1—, from the effects of —, incurred at —, on the — day of —, 1—. That said son left neither a widow, nor child under sixteen years of age, surviving. That she is without other *present* means of support than her own manual labor or the contributions of others not legally bound for her support. That she has — applied for a pension; the number of her application is —. That she makes this declaration for the purpose of being placed on the pension roll of the United States under the provisions of the act of June 27, 1890.

That the (soldier) has — been employed in the military or naval service otherwise than as stated above.

She hereby appoints — —, of —, State of —, her true and lawful attorney to prosecute her claim, and receive a fee of \$—. That her post-office address is —, county of —, State of —.¹

— —.
 (Claimant's signature.)

Attest:

(1) — —.

(2) — —.

Also personally appeared — —, residing at —, and — —, residing at —, persons whom I certify to be re-

spectable and entitled to credit, and who, being duly sworn, say that they were present and saw — —, the claimant, sign her name (or, make her mark) to the foregoing declaration; that they have every reason to believe, from the appearance of said claimant and an acquaintance with her of — years and — years, respectively, that she is the identical person she represents herself to be; and that they have no interest in the prosecution of this claim.¹

— —.
— —.

(Signatures of witnesses.)

Sworn to and subscribed before me this etc. (as in form No. 930.)²

— —.
— —.

(Signature.)

— —.

(Official character.)

(Indorsed):—

DEPENDENT MOTHER'S APPLICATION.

Claimant _____

Soldier _____

Service _____

Address :

Attorney _____

Address _____

1. The act of June 27, 1890, requires in case of dependent mother: present laws, would have given him a pension.

(1) That soldier died of a wound, (2) That he left no wife or minor child.
injury or disease, which, under

(3) That the mother is at PRESENT dependent on her own manual labor, or the contributions of others not legally bound for her support.

(4) All pensions under this act commence from the date of the receipt of the application in the pension bureau.

(5) The benefits of the first section of the act of June 27, 1890, are not confined to the parents of those who served in the war of the rebellion, but extend to cases arising since the termination of said war.

2. To be executed before any offi-

cer authorized to administer oaths for general purposes in the State, city, or county where said officer resides. If such officer has a seal and uses it upon such paper, no certificate of a county clerk or prothonotary or clerk of a court shall be necessary; but when no seal is used by the officer before whom the declaration is executed, then a clerk of a court of record or a county or city clerk shall affix his official seal thereto, and shall certify to the *signature and official character* of said officer.

No. 948.

Declaration for dependent father's pension.

STATE OF —, }
County of —, } ss.:

On this — day of —, one thousand eight hundred and ninety —, personally appeared before me a —, of the — in and for the county and State aforesaid, —, aged — years, resident of the — of —, county of —, State of —, who, being duly sworn according to law, declares that he is the father of —, who enlisted under the name of —, at —, on the — day of —, 1—, in — (here state rank, company and regiment in military service, or vessel, if in navy), in the service of the United States, who died at —, on the — day of —, 1—, from the effects of — incurred at —, on the — day of —, 1—. That said son left neither widow, nor child under sixteen years of age, surviving. That declarant was married to the mother of said son on the — day of —, 1—, at —, by —, and that she died on the — day of —, 1—, at —. That he is without other present means of support than his own manual labor, or the contributions of others not legally bound for his support. That he has — applied for a pension, the number of his

application being ——. That he makes this declaration for the purpose of being placed on the pension roll of the United States, under the provisions of the act of June 27, 1890.

That the soldier has —— been employed in the military or naval service otherwise than as stated above.

He hereby appoints ——, of ——, State of ——, his true and lawful attorney to prosecute his claim and receive a fee of \$——. That his post-office address is ——, county of ——, State of ——.¹

———. (Claimant's signature.)

Attest:

(1) ——.

(2) ——.

Also personally appeared ——, residing at ——, and ——, residing at ——, persons whom I certify to be respectable and entitled to credit, and who, being by me duly sworn, say that they were present and saw ——, the claimant, sign his name (or, make his mark) to the foregoing declaration; that they have every reason to believe from the appearance of said claimant and acquaintance with him of —— years and —— years, respectively, that he is the identical person he represents himself to be, and that they have no interest in the prosecution of this claim.

(1) ——.

(2) ——.

(Signatures of witnesses.)

Sworn to and subscribed before me, this, etc. (as in form No. 928).²

———. (Signature.)

———. (Official character.)

(Indorsed):—

DEPENDENT FATHER'S APPLICATION.

Claimant_____

Soldier_____

Service_____

Address:

Attorney_____

Address_____

1. The act of June 27, 1890, requires, in the case of dependent father:

(1) That the soldier died of a wound, injury, or disease which, under present law, would have given him a pension.

(2) That the soldier left no widow or minor child.

(3) That the father is at present dependent on his own manual labor, or the contributions of others not legally bound for his support.

(4) That all pensions under this act commence from the date of filing the application in the pension bureau.

(5) The benefits of the first section of the act of June 27, 1890, are not confined to the parents of

those who served in the war of the rebellion, but extend to cases arising since the termination of said war.

2. To be executed before any officer authorized to administer oaths for general purposes in the State, city or county where said officer resides. If such officer has a seal and uses it upon such paper, no certificate of a county clerk or prothonotary or clerk of a court shall be necessary; but when no seal is used by the officer before whom the declaration is executed, then a clerk of a court of record or a county or city clerk shall affix his official seal thereto, and shall certify to the *signature* and *official character* of said officer.

No. 949.

Declaration for soldiers' children who are permanently helpless.

STATE OF —, }
County of —, } ss.:

On this — day of —, A. D. one thousand eight hundred and ninety —, personally appeared before me a —

—, of the — in and for the county and State aforesaid, — —, aged — years, who, being duly sworn according to law, makes the following declaration in order to obtain the pension provided by act of congress, approved June 27, 1890: That — is the legal guardian of — —, who is at the present time suffering from —, which said disability, to — best knowledge and belief, is permanent in its character and renders — said ward permanently helpless. That — —, said ward, is the legitimate child of — —, who enlisted under the name of — —, at —, on the — — day of —, 1—, in — — (here state rank, company and regiment, if in the military service, or vessel, if in navy), and served at least ninety days in the war of the rebellion in the service of the United States, who was *honorably discharged* — —, and died — —. That he left — widow surviving him — (here state date of death or of remarriage).

That the mother was married under the name of — —, to — —, there being no legal barrier to such marriage. That — application has heretofore been made for a minor's pension numbered —, and a certificate number — granted.

That the soldier has — been employed in the military or naval service otherwise than as stated above.

That the declarant hereby appoints — —, of —, State of —, true and lawful attorney to prosecute this claim and receive a fee of \$—. That — post-office address is —, county of —, State of —.¹

Attest:

(Claimant's signature.)

(1) — —.

(2) — —.

Also personally appeared — —, residing at —, and — —, residing at —, persons whom I certify to be respectable and entitled to credit, and who, being duly sworn, say that they were present and saw — —, the claimant, sign — name (or, make — mark) to the foregoing declaration; that they have every reason to believe, from the ap-

pearance of said claimant and their acquaintance with —
for — years and — years, respectively, that — is the
identical person — represents — to be; and that they
have no interest in the prosecution of this claim.

(1) — —.

(2) — —.

(Signatures of witnesses.)

Sworn to and subscribed before me, this, etc. (as in form
No. 928).²

— —.

(Signature.)

— —.

(Official character.)

(Indorsed):—

SOLDIER'S CHILD'S APPLICATION.

Who is permanently helpless.

Guardian _____

Claimants _____

Soldier _____

Service _____

Address :

Attorney _____

Address _____

1. The act of June 27, 1890, re- (1) That the soldier served at least
quires that in minor children's cases ninety days in the war of the rebel-
who are permanently helpless : lion and was *honorably discharged*.

(2) Proof of soldier's death (cause need not have been due to army service), his marriage to mother and proof of her death or divestment of title.

(3) In case a minor child is insane, idiotic, or otherwise permanently helpless, the pension shall continue during the life of said child, or during the period of such disability, and this proviso shall apply to all pensions heretofore granted or hereafter to be granted under this or any former statute, and such pensions shall commence from the date of application therefor after the passage of this act.

(4) That the child of soldier was

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under the age of sixteen years at date of the death or remarriage of widow.

2. To be executed before any officer authorized to administer oaths for general purposes in the State, city or county where said officer resides. If such officer has a seal and uses it upon such paper, no certificate of a county clerk or prothonotary or clerk of a court shall be necessary; but when no seal is used by the officer before whom the declaration is executed, then a clerk of a court of record or a county or city clerk shall affix his official seal thereto, and shall certify to the *signature* and *official character* of said officer.

CHAPTER XXXIV.

Forms of Powers of Attorney.

- No. 950. General form of power of attorney.
- 951. Power of attorney to collect a debt.
 - 952. Same to receive or collect rents.
 - 953. Same to receive a legacy.
 - 954. Same to sell or lease lands.
 - 955. Same to take possession of lands and to sell them.
 - 956. Same to receive dividends.
 - 957. Transfer of stock with power of attorney.
 - 958. Power of attorney to vote at election or meeting of stockholders of corporation.
 - 959. A general power by substitution.
 - 960. A special power by substitution.
 - 961. A revocation of a power.
 - 962. Judgment note, with power of attorney to confess judgment.

No. 950.**General form of power of attorney.**

Know all men by these presents, that I, A. B., of —, have made, constituted and appointed, and by these presents do make, constitute and appoint, C. D., of, etc., my true and lawful attorney for me and in my name and stead (*) (state the act or acts authorized), (†) giving and granting to my said attorney by these presents full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do if personally present (with full power of substitution and revocation), hereby ratifying and confirming all that my said attorney

(or, his substitute) shall lawfully do or cause to be done by virtue hereof.

In witness, etc. (as in form No. 30.)¹

A. B. [L. S.]

Sealed and delivered in presence of

C. D.

(Acknowledgment, etc., when required, as in forms Nos. 6, etc.)²

1. Powers of attorney are to be strictly construed. (*Ferreira v. Depew*, 17 How. Pr. 418; *Geiger v. Bolles*, 1 Supr. Ct. Rep. (T. & C.) 129.) The general words contained therein are to be construed in reference to the particular terms which form the subject-matter of the instrument, in furtherance of but in subordination to, the general power conferred. (*Filley v. Gilman*, 34 N. Y. Super. Ct. (J. & S.) 339; *Craighead v. Peterson*, 72 N. Y. 279; S. C., 28 Am. Rep. 150, aff'g S. C., 10 Hun, 596.) A power of attorney to sue, recover and receive, etc., and to give releases of judgments recovered, gives no power to release without payment. (*De Mets v. Dagron*, 53 N. Y. 635.) A power of attorney to sell and convey does not in itself confer a power to mortgage. (*Bloomer v. Waldron*, 3 Hill, 361; *Coutant v. Servoss*, 3 Barb. 128.) See, also, *Albany Fire Ins. Co. v. Bay* (4 N. Y. 9); *Greenwood v. Spring* (54 Barb. 375). But where one receives a deed with power to sell for the benefit of another, and at the same time of sale, executes a mortgage for the purchase money, the mortgage is valid, for it is a part of an entire transaction, and is an inseparable qualification of the conveyance. (*Coutant v. Servoss*, *supra*.)

A power coupled with an interest is not revoked by the death of the

grantor, but a naked authority expires with the life of the person who granted it. (*Bergen v. Bennett*, 1 Cal. Cas. 1.) The same principle applies to the revocation of a power. A power coupled with an interest is irrevocable. A naked authority may be revoked at any time by the grantor. (*Raymond v. Squire*, 11 Johns. 47.) The death of an attorney authorized to appoint an attorney under him, and to revoke such appointment at his pleasure, necessarily revokes the power of a substitute so appointed. (*Watt v. Watt*, 2 Barb. Ch. 371.) See, also, *Weber v. Bridgman* (113 N. Y. 600); *Morgan v. Raynor* (5 Alb. L. J. 109); *Culver v. W. U. Tel. Co.* (50 N. Y. 691); *Hess v. Rau* (95 id. 359); *Farmers' Loan and Trust Co. v. Wilson* (139 N. Y. 284, aff'g S. C., 64 Hun, 194). Subsequent insanity of the principal does not revoke a power of attorney; and the transactions of the agent after the insanity of the principal, and before inquisition, with persons ignorant of the insanity of the principal, are binding upon the principal. (*Brown v. Nichols*, 9 Abb. Pr. N. S. 1; S. C., less fully, 42 N. Y. 26.)

A revocation of a power takes effect, as to the agent, from the time at which it is communicated to him, and as to third parties, from the time that it is made known to them; but, as respects third persons, the question of notice depends in each case upon its own peculiar circum-

stances. (*Williams v. Birbeck, Hoffm.* 359.)

Married women, lunatics, infants and other persons not *sui juris* are in general, and without statutory authority, disqualified from appointing an agent or attorney. (*Snyder v. Sponable*, 1 Hill, 567; *Hardenburgh v. Lakin*, 47 N. Y. 109.) By chapter 300 of Laws of New York of 1878, any married woman being a resident of that State, and of the age of twenty-one years or more, may execute, acknowledge and deliver her power of attorney with like force and effect and in the same manner as if she were a single woman. Before the passage of this act a power of attorney for the conveyance of real estate situated in that State, executed by a married woman resident out of the State, joining with her husband in its execution, was valid, provided that the execution of such power by her should first have been duly proved or acknowledged according to the provisions of the Revised Statutes in relation to conveyances executed by married women residing out of the State. (Chap. 275 of Laws of N. Y. of 1835; *Cumming v. Williamson*, 1 Sandf. Ch. 17.) See, also, as to powers of attorney by married women, *Nash v. Mitchell* (3 Abb. N. C. 171; S. C., 71 N. Y. 199; 27 Am. Rep. 38, rev'g 8 Hun, 471); *Parker v. Baker* (12 N. Y. State Rep. 598). See ch. 547 of Laws of New York of 1896, § 187, as to release by married woman of dower by power of attorney, and see *Wronkow v. Oakley* (133 N. Y. 505).

Where several persons are appointed trustees, or have power to act for a mere private (not a public) purpose, they must all join in executing the trust or power; this rule applies as well to trusts coupled with an interest, or surviving trusts, as to naked powers, and if this rule be not complied with, the act is merely void, not voidable only; and

a stranger may object to the defective execution. (*Sinclair v. Jackson*, 8 Cow. 543.)

See as to power to draw and indorse notes, etc., *North River Bank v. Aymar* (3 Hill, 362); as to power to invest, *Feldman v. Beier* (78 N. Y. 293); *Ackerman v. Emmott* (4 Barb. 626); as to power to conduct business, *Ferreira v. Depew* (17 How. Pr. 418); *Dollfus v. Frosch* (1 Den. 367); *Lawrence v. Gebhard* (41 Barb. 575); *Bank of N. Y. v. Vanderhorst* (32 N. Y. 553); *Myers v. Mut. Life Ins. Co.* (99 N. Y. 1, 7); as to power to buy and sell real estate and personal property, and to collect rents, money and debts, and to do every act and thing necessarily pertaining thereto, *Mills v. Caraly* (1 Bosw. 159); *Taylor v. Hoey* (36 N. Y. Super. Ct. 326); *Harnett v. Garvey* (id. 326); as to power to collect, *Holtsinger v. Nat. Corn Exchange Bank* (6 Abb. Pr., N. S., 292; S. C., 37 How. Pr. 203; 1 *Sweeney*, 64); *Sims v. U. S. Trust Co. of N. Y.* (103 N. Y. 472); *Grapel v. Hodges* (49 Hun, 107, aff'd S. C., 112 N. Y. 419); as to power to compromise, *Hawkins v. Avery* (32 Barb. 551); as to power to sue, *Garrigue v. Loescher* (3 Bosw. 578); as to power to bond assets, *Hunter v. Hunter* (17 Barb. 25); as to power to employ a broker, *Wickes v. Hatch* (62 N. Y. 535); as to power to sell and mortgage, *Kingsland v. Chetwood* (39 Hun, 602); *Clark v. Hyatt* (55 N. Y. Super Ct. 98, 105).

A power of attorney, describing in its body the grantor as executrix and sole legatee, and purporting on its face to be a power from her as executrix, is not impaired by failure to add the official character at the end of the signature. (*Myers v. Mut. Life Ins. Co.*, 99 N. Y. 1, 7.)

No. 951.**Power of attorney to collect a debt.**

As in last form, No. 950, to (*) and from thence as follows: to ask, demand, sue for, recover and receive all such sum and sums of money, accounts and other demands whatsoever, which are or shall become due, owing and payable to me, or be detained from me by J. K., of —, his heirs, executors and administrators; and upon the receipt thereof, receipts, acquittances or other sufficient discharges, for me and in my name to make, seal and deliver; (concluding as in form No. 950, from (†).)¹

(Signature and seal as in form No. 950.)

Sealed and delivered in presence of

C. D.

(Acknowledgment or proof, when required, as in forms Nos. 6, etc.)

1. See note to last form, No. 950.

No. 952.**Power of attorney to receive and collect rents.**

As in form No. 950, to (*) and from thence as follows: to ask, demand and receive all such rents, and arrears of rent, which now are, or hereafter shall grow due or owing to me from E. F., G. H., J. K., or any of them as tenants or occupiers of any lands, tenements or hereditaments belonging to (or, claimed by) me, situate at —, or by any other person or persons whomsoever, as tenants, occupiers or lessees or assignees of any term or terms of such lands, etc., or any part or parcel of them; and upon receipt thereof to give proper acquittances and sufficient discharges thereof; and, in default in payment thereof, or any part thereof, to my said attorney, to proceed by a suit or suits at law for the recovery thereof, as by him, my said attorney, shall be thought fit; (concluding as in form No. 950, from (†).)¹

(Signatures, etc., as in form No. 950.)

1. See notes to form No. 950.

No. 953.**Power of attorney to receive a legacy.**

As in form No. 950, to (*), and from thence as follows: to ask, demand and receive a certain legacy, of — dollars, which F. G., late of —, deceased, did give and bequeath unto me, the said A. B., by his last will and testament, of which I. J. and K. L. are the executors (to be paid to me on the — day of —, 1—); and upon receipt thereof by, or payment thereof to, my said attorney, a general release or discharge for the same, to make, execute and deliver (conclude as in form No. 950, from (†)).¹

(Signatures, etc., as in form No. 950.)

1. See notes to form No. 950. A of substitution,— *Held*, to authorize power of attorney to ask, demand the employment of an attorney to and receive "all the estate, legacy, bring a partition suit. (*Woerman v. Baas*, 35 State Rep. 276; S. C., 12 N. Y. Supp. 59.)

No. 954.**Power of attorney to sell or lease lands.**

As in form No. 950, to (*), and from thence as follows: to lease the house and lot (or, farm, etc.) belonging to me, situated at —, known as (giving description), to such person or persons, and for such a term or number of years, or for life or lives, and at and under such yearly and other rents as he shall think fit; and taking such security therefor as he shall deem proper; or otherwise to sell or dispose of the same absolutely in fee simple, for such price or sum of money, and to such person or persons as he shall think fit and convenient. And also for me, and in my name, and as my act and deed, to sign, seal, execute and deliver such deeds and conveyances, for the leasing or the absolute sale and disposal thereof, or of any part thereof (with such clauses, covenants and agreements to be therein contained, as my said attorney shall think fit and expedient; hereby ratifying and confirming all such leases, deeds, conveyances,

bargains and sales which may at any time hereafter be made, touching and concerning the premises).

In witness, etc. (as in form No. 30).¹

A. B. [L. S.]

Sealed and delivered in presence of
G. H.

(Acknowledgment, etc., as in forms Nos. 6, etc.)

1. See note to form No. 950.

Jackson, 8 Cow. 543.) If it can, yet

Whether under a general power of leasing, a lease can be made to commence *in futuro*, after the expiration of a subsisting lease given under the same power? *quere.* (Sinclair v.

both terms must not exceed the time or term limited in the power. Such excess would make it void at law *in toto*, though it might be good in equity *pro tanto.* (Id.)

No. 955.

Power of attorney to take possession of lands and to sell them.

As in form No. 950, to (*), and from thence as follows: to enter into and take possession of all such lands, tenements, hereditaments and real estate whatsoever, situated in the State of (New York), whereof I now am or hereafter may be, by any ways or means howsoever, entitled or interested in, either in severalty or jointly, or in common with any other person or persons.

And also for me and in my name, to grant, bargain and sell the said lands, etc., or any part, share or proportion thereof, and all such right, title, interest, claim and demand, both in law and in equity, as I may have in the same, for such sum and price and on such terms as to him shall seem meet, and for me and in my name, to make, execute and deliver good and sufficient deeds and conveyances for the same, and every part thereof, either with or without covenants and warranty.

And until the sale thereof for me and in my name, and for my use, to let and demise the said real estate, or any part or parts thereof, for the best rent that can be gotten for the same.

And also for me and in my name, and for my use, to ask, demand and receive all sums of money which shall become

due, owing or payable to me by means of any such bargain, sale or lease, and to have and take all lawful ways and means for the recovery thereof, by attachment, arrest (distress)¹ or otherwise, and to compound, arbitrate and agree for the same, and acquittances or other sufficient discharges for the same to make, seal and deliver (concluding as in form No. 950, from (†), to end thereof).²

In witness, etc. (as in form No. 30).

(Signature, etc., as in form No. 950.)

1. See note 1 to form No. 788.

2. See note 1 to form No. 950.

No. 956.

Power of attorney to receive dividends.

As in form No. 950, to (*), and from thence as follows: to receive the dividend or dividends which are or shall be payable on the — day of —, 1—, by the (naming corporation) upon the stock standing in my name on the books of said (bank) (concluding as in form No. 950, from (†)).¹

(Signature, etc., as in form No. 950.)

1. See note 1 to form No. 950.

No. 957.

Transfer of stock with power of attorney.

Know all men by these presents, that I, A. B., of the (city) of —, in the county of —, and State of —, for value received, have bargained, sold, assigned and transferred, and by these presents do bargain, sell, assign and transfer unto C. D. (describe stock, *e. g.*: Ten (10) shares of the capital stock of the (name of corporation), certificate No. —), standing in my name on the books of the said company (or, corporation), and do hereby constitute and appoint said C. D. (or, E. F.; or, the cashier (or, president) of the —, etc.), my true and lawful attorney irrevocable, for me and in my name and stead, but to (his) use, to sell, assign, transfer and set over all or any part of the said stock, and for that purpose to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full

power, hereby ratifying and confirming all that my said attorney or (his) substitute or substitutes shall lawfully do by virtue hereof.

In witness whereof, I have hereunto set my hand and seal the — day of —, one thousand — hundred and —.¹

A. B. [L. S.]

Sealed and delivered in the presence of

G. H.

(Acknowledgment or proof, as in forms Nos. 6, etc.)

1. See note 1 to form No. 950.

No. 958.

Power of attorney to vote at election or meeting of stockholders of corporation.

See form No. 418.

No. 959.

A general power by substitution.

Know all men by these presents, that whereas, A. B., of, etc., by his certain letter of attorney, bearing date the — day of —, 1—, did make, etc. (reciting the power at large), as by the same letter of attorney, reference being thereunto had, will more fully appear: Now, know ye, that I, the said C. D., the attorney so named, in virtue of the authority to me given in and by the said letter of attorney, have nominated and appointed and by these presents do nominate and appoint J. E., of, etc., as my substitute, and the attorney of the said A. B., for the purposes in the said letter of attorney mentioned, and as the attorney of the said A. B. to do, permit, suffer and perform, all and singular the matters and things in the said letter of attorney specified, and which by the said letter of attorney I am authorized to do, permit, suffer or perform.

In witness, etc. (as in form No. 30).

A. B. [L. S.]

Sealed and delivered in presence of

M. N.

(Acknowledgment, as in forms Nos. 6, etc.)

No. 960.**A special power by substitution.**

Know all men by these presents, that I, A. B., of, etc., by virtue of the power and authority to me given by a certain letter of attorney, bearing date, etc., and executed by C. D., of, etc., have nominated and appointed, and by these presents do nominate and appoint I. E., of, etc., as my substitute, and the attorney of the said C. D. to enter into and upon all and singular the lands, tenements and hereditaments to the said C. D. belonging, at, etc., and to take possession of the same in his name and for his use; and also to demand and receive all rents now in arrear, or which may hereafter become due from the tenants, holders or occupiers of such lands, tenements and hereditaments, or any part or parcel thereof, and to give acquittances and discharges for the same; and also in default of payment of such rents, or any parcel thereof, to (levy the same by distress, according to law,¹ or to) prosecute for the same by action.

In witness, etc. (as in form No. 30).

C. D. [L. S.]

Sealed and delivered in presence of

E. F.

(Acknowledgment, as in forms Nos. 6, etc.)

1. See note 1 to form No. 788.

No. 961.**A revocation of a power.**

Know all men by these presents, that whereas I, A. B., of —, in and by my letter of attorney, bearing date on, etc., did make, constitute and appoint C. D., of —, my attorney, for recovery of all debts and sums of money whatsoever due to me, the said A. B., from E. F., of —, as by the said letter of attorney may appear: Now, know ye, that I, the said A. B., have revoked, countermanded, annulled and

made void, and by these presents do revoke, countermand, annul and make void the said letter of attorney, and all power and authority thereby given, or intended to be given, to the said C. D.

In witness, etc. (as in form No. 30).

C. D.

Sealed and delivered in presence of

E. F.

(Acknowledgment, as in forms Nos. 6, etc.)

No. 962.

Judgment note with power of attorney to confess judgment.

\$2268.

SOUTH BETHLEHEM, *January 12, 1—*.

One year after date I promise to pay L. M. Y., twenty-two hundred and sixty-eight dollars, without defalcation, for value received. And I also hereby authorize any attorney of any court of record in Pennsylvania, or elsewhere, to confess judgment therefor and release of errors, and I do hereby waive all stay of execution from and after the maturity of the above note.

Witness my hand and seal the day and date above written, with ten per cent allowed for collection fees, with interest from date.¹

A. Y. [L. S.]

Witness present:

G. Z.

1. See *Teel v. Yost* (128 N. Y. 387), as to this form of instrument, usually called a judgment note, an obligation quite common in the States of Pennsylvania and New Jersey, and of a judgment thereupon rendered in the Court of Common Pleas of Pennsylvania. See same case, also, as to the history of legislation in the State of New York, in relation to judgments by confession.

The provision of the New York Code of Civil Procedure (§ 1274), in relation to judgments by confession, requiring the defendant to state the nature and circumstances of the indebtedness and to verify the same, has no relation to the jurisdiction of the court, or the authority of the clerk to enter judgment; its only purpose is to protect creditors from a judgment fraudulently confessed by

an insolvent debtor; and so, the omission of the verified statement does not render the judgment void, but only voidable at the instance of certain creditors; it may not be impeached by the defendant because of the omission. (Id) See, also, form No. 317, for bond and warrant of attorney to confess judgment.

Poor Laws.

See Support of Bastard ; Support of Relative ; Support of Poor Person.

CHAPTER XXXV.

Forms of Promissory Notes, Bills and Checks.

- No. 963. Promissory note payable to order or bearer on demand, etc.
- 964. Inland draft or bill of exchange, and acceptance of same.
- 965. Foreign bill of exchange in a set.
- 966. Promissory note payable to bank, pledging collaterals for its payment.
- 967. Protest of foreign bill for non-acceptance.
- 968. Notice to indorser of demand and refusal of payment of promissory note or draft.
- 969. Form of agreement of waiver of demand and notice by indorser.

No. 963.

Promissory note, payable to order or bearer, on demand, etc.

\$100.

ALBANY, — —, 1 — —.

On demand [or, — days after demand; or, — days after date; or, on the — day of —, 1 — (without grace)] for value received, I (or, we (jointly and severally) or The (name of corporation)) promise (or, promises) to pay (to the order of) C. D. (or, to the bearer) — $\frac{100}{100}$ dollars (at the E. F. Bank of —) (with interest).¹

A. B.

(G. H.)

The (name of corporation) by I. J.,
Treasurer, etc.

Indorsements :²

C. D. or, (without recourse) Pay to the order of M. N. (signed) C. D. or, The (name of corporation) by P. R., Treasurer, etc., or Pay to the order of M. N. (signed) C. D. by F. P., his attorney.

1. A promissory note is an unconditional promise, in writing, to pay to a certain person or corporation named a certain sum of money at a

certain future time. Its essential qualities are, 1. That it be payable at all events; not dependent upon any contingency, nor payable out of a particular fund; and, 2. That it be for the payment of money only, and not for the performance of some other act, or in the alternative. (*Cook v. Satterlee*, 6 Cow. 108.)

A promissory note is said to be negotiable when made payable to order or bearer, or from which the intention to make it negotiable can be implied without the use of these words. (*Bigelow on Bills and Notes*, p. 12, 2d ed.)

A note payable to "the bearer A." has been held not to be negotiable. (*Warren v. Scott*, 32 Iowa, 22.)

By the Revised Statutes of New York State, all notes in writing, made and signed by any person, whereby he shall promise to pay to any other person, or his order, or to the order of any other person, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed; and shall have the same effect, and be negotiable in like manner as inland bills of exchange, according to the custom of merchants. (1 N. Y. Rev. Stat. 768, § 2; 7th ed., 2242.)

Every such note, signed by the agent of any person, under a general or special authority, shall bind such person, and shall have the same effect and be negotiable as above provided. (*Id.*, § 2.)

The word "person," in the two last preceding sections, shall be construed to extend to every corporation capable by law of making contracts. (*Id.*, § 3.)

The payees and indorsees of every such note payable to them or their order, and the holders of every such note payable to bearer, may maintain

actions for the sums of money therein mentioned, against the makers or indorsers of the same respectively, in like manner as in case of inland bills of exchange, but not otherwise. (*Id.*, § 4.)

Such notes, made payable to the order of the maker thereof, or to the order of a fictitious person, shall, if negotiated by the maker, have the same effect, and be of the same validity as against the maker and all persons having knowledge of the facts, as if payable to bearer. (*Id.*, § 5.) See *Lewisohn v. Kent, etc., Co.* (87 Hun, 257).

The statute above referred to is, it seems, a substantial enactment of the statute 3 and 4 Anne, chap. 9, by the legislature of New York, prior to which there had been much doubt as to the negotiability of promissory notes. The act referred to was passed to set the matter at rest; and its terms have been generally adopted in this country, either by statute or as part of the common law. (*Bigelow on Bills and Notes*, p. 12, 2d ed.)

A transferee of negotiable commercial paper for value, in the ordinary course of business (by indorsement and delivery if payable to order, and by delivery, if payable to bearer), without notice of any defects in the title, is protected by the law merchant against all latent equities, whether of third persons or of parties to the instrument. His title is perfect and his right to enforce the obligation absolute. (*Muller v. Poudir*, 55 N. Y. 325; *Evertson v. National Bank of Newport*, 66 id. 14; *Fisher v. Leland*, 4 Cush. 456; *Spooner v. Holmes*, 102 Mass. 503.)

But if any of the circumstances are wanting which go to make this perfect title, a purchaser or transferee of such paper takes it subject to the

same rules which control in the case of a transfer or assignment of non-negotiable instruments; that is, he only acquires such rights and equities as existed in his vendor, and takes subject to all equities as against him. (*Muller v. Pondir, supra.*)

Where a promissory note, payable to order, is not indorsed by the payee, but is transferred to another by delivery merely, the holder of the note is a mere assignee, and his rights are to be settled by the same rules that govern the case of an assignee of any other chose in action. (*Hedges v. Sealy*, 9 Barb. 214.)

A party who writes his name upon the back of a note not negotiable, there being no contract of indorsement, renders himself, according to the New York cases, liable to the holder either as maker or guarantor, according to the nature of the contract made by him, and the holder may overwrite the indorser's name with the real contract. (*Richards v. Warring*, 1 Keyes, 576, aff'd S. C., 39 Barb. 42; *Cromwell v. Hewitt*, 40 N. Y. 491.)

See, also, *Carnright v. Gray* (57 Hun, 518; aff'd, S. C., 127 N. Y. 92); *Newman v. Frost* (52 id. 422); *McMullen v. Rafferty* (89 N. Y. 456); *Griswold v. Slocum* (10 Barb. 402); *Leavens v. Thompson* (48 Hun, 389).

Such indorser is not entitled to notice of demand of, and of non-payment by the maker. (*Id.*)

See the reporter's note to *Cromwell v. Hewitt* (*supra*, p. 492), as to the decisions in other States upon this subject.

"In all the cases in this court," says the reporter in that note at page

496, "*Moore v. Cross*, *Richards v. Warring*, and the present case, the history and purpose of the indorsement were shown by extrinsic evidence. What the legal import of such an indorsement would be in the absence of any explanatory proof whatever, may, perhaps, therefore still be regarded as not yet strictly decided in this State, although the language of *Mason, J.*, in his opinion, is general enough to cover such a case."

A promissory note, reading "One day after date for value received, I promise to pay," etc., was signed by E. S. L. and by N. L., the latter prefixing to his name the word "surety." Held, that N. L. was liable as maker, notwithstanding the word "surety" was prefixed to his name. (*Braman v. Lyon*, N. Y. Supr. Ct., Gen. Term, 27 N. Y. Week. Dig. 168.)

The words "value received" do not constitute an essential part of a promissory note, nor does its negotiability. (*Carnright v. Gray*, 57 Hun, 518; aff'd, S. C., 127 N. Y. 92.)

2. As to the duties and liabilities of an indorser without recourse, see *Drennan v. Bunn* (124 Ill. 175; 7 Am. St. Rep. 354, and note); *Bank of Albion v. Smith* (27 Barb. 489); *Fassin v. Hubbard* (55 N. Y. 465); *Van Valkenburgh v. Stuppelbeen* (49 Barb. 99); *Arnson v. Abrahamson* (30 N. Y. State Rep. 657; 9 N. Y. Supp. 514).

To relieve one who indorses paper from liability as indorser, he must insert in the contract itself words clearly expressing such intention. (*Fassin v. Hubbard, supra.*)

See *Railway Equipment Co. v. Lincoln Nat. Bank* (82 Hun, 8) as to corporate liability upon note, etc. *Knapp v. Greene* (79 id., 264) as to note payable on demand after three months' notice, and see the Negotiable Instruments Law, chapter 612 of Laws of New York of 1897 am'd 1898, ch. 336.

No. 964.

Inland draft or bill of exchange, and acceptance of same.

\$——.

ALBANY, — — —, 1——.

At sight (or, — days after sight; or, on demand; or, — days after date), pay to the order of M. F., — dollars (with interest), and charge the same to account of¹

E. F.

To M. P., 24 Wall street, New York city.

Accepted — (Date).

(Payable at —.)²

M. P.

Indorsed: —

Pay to the order of L. H. (without recourse to me, or, for collection).³

M. F.

(by C. D., his Attorney.)

1. The essential qualities of a bill of exchange are: 1. That it be payable at all events; not dependent upon any contingency, nor payable out of any particular fund; and, 2. That it be for the payment of money, and not for the performance of some other act or in the alternative. (Cook v. Satterlee, 6 Cow. 108.)

A negotiable bill of exchange is usually one made payable to order of some person or corporation, or to bearer, but, it seems, no formal words are necessary. It is enough if it can fairly be inferred by the terms of the contract that the intention was to make it negotiable. The intention is the test. (Bigelow on Bills and Notes, 2d ed., 12; Edwards on Bills, etc., 1st ed., 164; United States v. White, 2 Hill's Rep. 59.)

A bill or note does not lose its negotiable character by being dishonored, and the indorser, after maturity, writes in the same form, and

is bound only upon the same condition of demand and notice of non-payment as any other indorser. The negotiable character of the note can only be changed by an indorsement containing express words of restriction. (Leavitt v. Putnam, 3 N. Y. 494, rev'g S. C., 1 Sandf. 199.)

See further as to negotiable instruments, note to form No. 963.

Bills of exchange are foreign or inland, according as the drawee has his residence in a different State or country from that of the drawer, or in the same State or country. (Bigelow on Bills, etc., 2d ed., 23.)

Bills drawn in one State of the Union and payable in another are held to be foreign bills. (Buckner v. Finlay, 2 Peters' U. S. Rep. 536; Wells v. Whitehead, 15 Wend. 527; Halliday v. McDougall, 20 id. 81; S. C., 22 id. 264.)

In a bill of exchange or promissory note, a "month" means a cal-

endar, not a lunar month. (*Leffingwell v. White*, 1 Johns. Cas. 99; 1 N. Y. R. S. 606, § 4.)

But for the purpose of calculating interest, a month is to be considered the twelfth part of a year, and as consisting of thirty days, and interest for any number of days less than a month is to be estimated by the proportion which such number of days shall bear to thirty. (1 N. Y. R. S. 773, § 9; 7th ed., 2254.)

A check is a bill of exchange drawn upon a bank or banker, and payable on demand. (*Bigelow on Bills, etc.*, 2d ed., 23; *Chapman v. White*, 6 N. Y. 412; *Bowen v. Newell*, 8 id. 190; *Harris v. Clark*, 3 id. 93.) A bill in which the time of payment is not expressly specified is by implication of law payable on demand. (*Harris v. Clark*, *supra*, p. 115.)

Three days of grace are usually allowed the acceptor after the bill becomes due and payable by its terms. These days were originally, what the words imply, an indulgence or respite granted to the acceptor as a matter of favor; but they have at length ripened into a right as clear and definite as any conferred by the positive stipulation of the parties. So that, for all practical purposes, a bill or note entitled to days of grace becomes due at the same time and in the same manner as if these days were added to the time it has to run, and the instrument drawn without grace. (*Edwards on Bills, etc.*, 517; *Hogan v. Cuyler*, 8 Cow. 203.)

By statute of New York it is provided that all bills of exchange, drawn payable at sight, at any place within that State, shall be deemed due and payable on presentation, without any days of grace being allowed thereon. (Laws of New York

of 1857, vol. 1, chap. 416, p. 838, § 1; R. S., 7th ed., 2246.)

By the same statute, all checks, bills of exchange or drafts, appearing on their face to have been drawn on any bank, or upon any banking association or individual banker, carrying on banking business under the act to authorize the business of banking, which are on their face payable on any specified day, or in any number of days after the date or sight thereof, shall be deemed due and payable on the day mentioned for the payment of the same, without any days of grace being allowed, and it shall not be necessary to protest the same for non-acceptance. (*Id.*, § 2.)

The general rule of law is that when the last day of grace falls on a Sunday or on a legal holiday, the bill or note must be demanded on the day previous; it cannot be demanded on the Sunday or holiday. (*Lewis v. Burr*, 2 Cai. Cas. 195; *Ransom v. Mack*, 2 Hill, 587.) This rule applies, however, only when days of grace are allowable on the instrument. When such days are not allowable, the demand must be made on the next business day. (*Salter v. Burt*, 20 Wend. 205.)

These rules have, however, been changed by statutes in New York of 1887 as to bills and notes made after their passage. (Sess. Laws N. Y., chap. 289, p. 364; *id.*, chap. 461, p. 475.) See, also, chapter 612 of Laws of New York of 1897, repealing ch. 461 of Laws of 1887, and ch. 614 of Laws of 1897, repealing ch. 289 of Laws of 1887, and see *Sylvester v. Crohan* (138 N. Y. 494), construing provisions of chapter 289 of Laws of 1897.

2. By statute in New York State acceptance of a bill of exchange must be in writing, signed by the acceptor or his lawful agent; and if on a separate paper, does not bind the acceptor, except in favor of a person to whom it was shown, and who, on the faith thereof, received the bill for value. And an unconditional prom-

ise in writing to accept a bill before it is drawn, shall be deemed an actual acceptance in favor of a person who, upon the faith thereof, shall have received the bill for value. A refusal to write acceptance on the bill is a refusal to accept. (1 R. S. 768, §§ 6-9; 7th ed., §§ 2242, 2243.) See *Seaboard Nat. Bank v. Burleigh* (74 Hun, 400), and § 223 of chapter 612 of Laws of New York of 1897.

Destroying a bill left with the drawee for acceptance, or refusing to return the same, is equivalent to acceptance. (Id., § 11.)

Before the statute a parol acceptance was good. (*Leonard v. Mason*, 1 Wend. 522.)

The name of the drawee written across the face of a bill is a sufficient acceptance within the above mentioned statute. (*Spear v. Pratt*, 2 Hill, 282.)

A verbal promise to accept a bill to be drawn is void under the above statute. (*Loonie v. Hogan*, 9 N. Y. 435.)

The above statutory provisions embrace all bills wherever drawn, that are to be accepted and paid within the State of New York. (*New York and Virginia State Stock Bank v. Gibson*, 5 Duer, 574.)

The acceptance of a bill of exchange must be absolute according to the tenor of the bill; that is to say, it should not be varied or qualified in any material particular. If, therefore, the person upon whom it is drawn accepts it conditionally, or payable out of a special fund, and refuses to make an unqualified acceptance, it should be protested for non-acceptance. (*Walker v. The Bank of the State of New York*, 13 Barb. 636; S. C. aff'd, 5 Seld. 582.) If a bill be drawn on a person residing in one city and accepted by him payable at a banking house in another city, the acceptance is not according to the tenor of the bill; but there is no ob-

jection to an acceptance making the bill payable at a bank or broker's office in the city where the acceptor resides. (*Edwards on Bills*, etc., 1st ed., 383, citing *Rowe v. Young*, 2 Brod. & Bing. 165.)

3. If the payee of a note or bill payable to him or bearer, indorses it, he may be made liable as indorser. (*Brush v. Adm'rs of Reeves*, 3 Johns. 439.)

The initials of defendant, written on the back of a check, may be sufficient to charge him as indorser. (*Merchants' Bank v. Spicer*, 6 Wend. 443.) See, also, *Palmer v. Stephens* (1 Den. 471).

The defendant had written the figures 1.2.8., in pencil upon the back of the bill of exchange in suit. They were written as a substitute for his name, and as an indorsement of the bill. *Held*, he was liable as indorser, at least to a party who took the bill on the faith of the indorsement, and of an agreement by the defendant to be bound by it. (*Brown v. Butchers and Drovers' Bank*, 6 Hill, 443.)

When the payee or indorsee of a promissory note or bill of exchange intends simply to sell or transfer the instrument without rendering himself liable thereon as an indorser, he should state the fact in his indorsement; which may be done by adding under his name "without recourse to me" or any other words showing that he does not intend to incur any responsibility. (*Edwards on Bills*, etc., 1st ed., 282, citing *Goupy v. Harden*, 7 Taunt. 160; 2 Marsh. 454.) Any form of words will answer the same purpose, by which the party indorsing disclaims the responsibility of an indorser. (Id.; *Rice v. Stearns*, 3 Mass. 225.)

As to indorsement of a non-negotiable note or bill, see *Griswold v.*

Slocum (10 Barb 402); *Roe v. Hallett* (34 Hun, 128, and cases there cited).

Where a note, although payable to order, is transferred by assignment, without indorsement, the transferee

takes it as assignee, and subject to all the equities between the original parties. (*Franklin Bank v. Raymond*, 3 Wend. 69.)

See further note 1 to form No. 963, and chapter 612 of Laws of 1897, referred to therein.

No. 965.

Foreign bill of exchange, in a set.

No. 2508.

GENEVA, *January* 31, 1——.

\$500.

On the first day of May next (or, at sight ; or, — days after sight ; or, on demand ; or, — days after date, etc.) pay by this (*) first of exchange (second and third unpaid) to the order of (ourselves) (or, to bearer) the sum of (five hundred) dollars, value received (in goods) which you will allow, pursuant to the advice (or, without further advice)¹ of

J. M. B. & Co.

To Mr. H. R.,

Albany, N. Y.

As above to (*) and from thence as follows : second of exchange (first and third unpaid) to the order, etc., as above.

(Signature as above.)

(Direction as above.)

As first above to (*) and from thence as follows : third of exchange (first and second unpaid) to the order, etc., as above.

(Signature as above.)

(Direction as above.)

Accepted, Feb. —, 1—— (payable at —, A. N. B.)²

H. R.

Indorsement :

Pay to the order of C. D. E. (of —), value received (in account).³

GENEVA, *February* 15, 1——.

J. M. B. & Co.

1. For definition of foreign bill of exchange, see note 1 to form No. 964.

They are usually drawn in several parts, the whole of which make up

what is called a set. Commonly the drawer delivers to the payee three bills of the same tenor and date ; and each of these contains a condition

that it is to be paid, provided the others remain unpaid, and all of them collectively amount to one bill, and a payment of one of the set is payment of the whole. (Edwards on Bills, etc., 161; Wells v. Whitehead, 15 Wend. 527.) Whatever may be the number of parts, it is important that the condition inserted in each should mention every other part of the set; otherwise the drawer might in some cases be compelled to pay the bill twice over. Thus if the drawer make the first bill without any reference to any other part, and draw the second payable on condition the first has not been paid; and the second is first presented and paid, and the first falls into the hands of a third person and is transferred to a *bona fide* holder, he might be compelled to pay it a second time. (Edwards on Bills, etc., 161, citing Da-

vison v. Robertson, 3 Dow. 218, 228.) But where the several parts are drawn in the usual manner, each referring to the other parts, payment of one is payment of the set; and if one of them is transferred by indorsement to a third person, it vests in him the right to the possession of the whole set. (Edwards on Bills, etc., 162.)

If the payee to whom the several parts are delivered, as in due course of business they ought to be, negotiates different parts of the same bill to different persons, he is answerable on each. Being both the payee and acceptor of the bill, he is responsible on as many parts as he puts in circulation. (Id., citing Downes *et al.* v. Church, 13 Peters, 205.)

2. See as to acceptance of bill of exchange, note 1 to form No. 964.

3. See as to indorsement of bill of exchange, note 1 to form No. 964.

No. 966.

Promissory note payable to bank pledging collaterals as security for its payment.

\$—

—, N. Y., —, 1—.

Three months (or, specify other term of payment, or, on demand, or, on the — day of —, 1—) after date I [or, we (jointly and severally) promise to pay (or, the — company promises to pay)] to — The Bank, of —, at said bank, in the (city) of —, — dollars, for value received, with interest at the rate of (six) per cent per annum, hereby pledging to the said bank, as security for the payment of this note, the under mentioned security (with authority to sell the same, on non-performance of this promise, in such manner as they in their discretion may deem proper, without notice, either at the Brokers' Board, New York city, or at public or private sale, and to apply the proceeds thereon) viz.: [describing security, *e. g.*, ten shares of the

capital stock of the — (name of corporation) certificate No. —.]

In case of depreciation in the market value of the security hereby pledged, or which may hereafter be pledged to secure this note, a payment is to be made on account, on demand, so that the said market value shall always be at least (ten) per cent more than the amount unpaid of this note. In case of failure to do so, this note shall be deemed to be due and payable forthwith, anything hereinbefore expressed to the contrary notwithstanding; and the bank may immediately reimburse itself by sale of the security, it being understood and agreed that if such sale be by public auction, the said bank shall be at liberty to purchase, for its own account, any property offered at such sale.¹

And it is hereby further agreed and understood that if recourse is had to the collaterals, any excess of collaterals upon this note shall be applicable to any other note or claim of whatever nature held by said bank against (me);² and in case of any exchange of, or addition to the collaterals above named, the provisions of this note shall extend to such new or additional collaterals.

A. B.

(C. D.)

(or, The — Co., by C. D., its President, etc.)

1. The general rule is that the pledgee cannot purchase the pledge (Bryan v. Baldwin, 52 N. Y. 232); and to take the case out of the general rule the right of the pledgee to become the purchaser must be given in very plain terms. (Hamilton v. Schaack, N. Y. Supr. Ct., Gen. Term, 16 N. Y. Week. Dig. 423.)

An authority given to the pledgee to sell the stock to any person, persons or corporation does not authorize him to sell to himself. To en-

title him to become the purchaser requires a more direct and unequivocal stipulation. (Hamilton v. Schaack, *supra*.)

2. When securities are pledged to a banker or broker for the payment of a particular loan or debt, he has no lien upon such securities for a general balance or for the payment of other claims. (Wyckoff v. Anthony, 90 N. Y. 442, aff'g S. C., 9 Daly, 417.)

No. 967.

Protest of foreign or inland bill for non-acceptance.

UNITED STATES OF AMERICA, }
State of (New York), } ss.:

On the — day of —, in the year of our Lord one thousand — hundred and —, at the request of A. B. (naming bearer or holder), I, J. G., a notary public, duly admitted and sworn, dwelling in the (city) of —, in the State aforesaid, did present the original bill of exchange hereunto annexed [or, of which the following is a copy, to wit (insert copy)], to E. F., the drawee therein named, for acceptance, who refused to accept the same [for the reason that (insert reason assigned for refusal, if any was given)].

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer (and indorsers) of the said bill, as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages and interest already accrued, and to be hereafter incurred, for want of acceptance of the same.

[I thereupon, on the same day and year above written, and after said demand and refusal, duly notified the maker or drawer (and indorser) of the non-acceptance of the same, as follows: By putting in the post-office, in the city of —, notices of such demand, refusal and non-acceptance, and paying the postage thereon, addressed as follows: One for A. F., directed to him at (Syracuse, New York), one for M. P., directed to him at (Boston, Massachusetts), each of the above named places being the reputed place of residence of the person to whom the notice was directed, and the post-office nearest thereto.]

In testimony whereof I have hereunto subscribed my
 [L. S.] name and affixed my seal of office.¹

F. G.,

Notary Public.

1. A foreign bill dishonored, tion of the protest sent with the
 should be protested, and informa- notice. (Rogers v. Stephens, 2 Term

Rep. 713; *Gale v. Walsh*, 5 id. 239; *Brough v. Perkins*, Lord Raym. 903; *Edwards on Bills*, etc., 461.)

The New York Code of Civil Procedure provides as follows, on the subject of a notary's certificate: The certificate of a notary public of the State, under his hand and seal of office, of the presentment by him, for acceptance or payment, or of the protest, for non-acceptance or non-payment, of a promissory note or bill of exchange, or of the service of notice thereof, on a party to the note or bill; specifying the mode of giving the notice, the reputed place of residence of the party to whom it was given; and the post-office nearest thereto; is presumptive evidence of the facts certified, unless the party, against whom it is offered, has served upon the adverse party, with his pleading, or within ten days after joinder of an issue of fact, an original affidavit, to the effect that he has not received notice of non-acceptance, or of non-payment of the note or bill. A verified answer is not sufficient as an affidavit, within the meaning of this section. (N. Y. Code Civ. Pro., § 923.)

When a certificate showing the protest of a promissory note, and the service of a notice thereof has been made by a notary, as prescribed by the above section, and the same has been lost, a second certificate may be given by the notary and may be read in evidence with the same force and effect as the original. (*Kellam v. McKoon*, 31 Hun. 519.)

A notarial certificate, founded upon a presentment and demand, made, not by the notary, but by his clerk, is void. (*Gawtry v. Doane*, 51 N. Y. 84.)

A notarial certificate of the protest of a foreign bill of exchange cannot

be received in evidence without the notary's seal, and an ink stamp of the seal is not sufficient. (*Richard v. Boller*, 6 Daly, 460.) See, also, *Bank of Rochester v. Gray* (2 Hill, 227).

It is further provided by the New York Code of Civil Procedure that in case of the death or insanity of a notary public of that State, or of his absence or removal, so that his personal attendance, or his testimony, cannot be procured, in any mode prescribed by law, his original protest, under his hand and official seal, the genuineness thereof being first duly proved, is presumptive evidence of a demand of acceptance, or of payment, therein stated; and a note or memorandum, personally made or signed by him, at the foot of a protest, or in a regular register of official acts, kept by him, is presumptive evidence that a notice of non-acceptance or non-payment was sent or delivered, at the time, and in the manner, stated in the note or memorandum. (N. Y. Code Civ. Pro., § 924.)

Where a bill of exchange, payable at a future time, is presented for acceptance, and acceptance is refused, notice must be immediately given to the drawer and indorsers, or they are discharged. (*Walker v. The Bank of the State of New York*, 9 N. Y. 582, 584.)

If due notice of non-acceptance is given, the holder may immediately proceed against the drawer and indorsers, without waiting for the maturity of the bill. (Id.)

Where the holder of a bill of exchange transmits it to his agent for presentment to the drawee, such agent has no right to receive anything short of an explicit and unequivocal acceptance, without giving

notice to the holder, as in case of non-acceptance; and he will be liable for any loss the holder may sustain in consequence of his neglect to do so. (Id.)

The custom of merchants requires that there should be a protest in case of the non-acceptance of a foreign bill of exchange; and the proper officer to make this protest is a notary public, unless it is to be made at a place where there is no notary; and

then it may be by a substantial person of such place, in presence of two or more witnesses. (*Chanoine v. Fowler*, 3 Wend. 176, per Marcy, J., citing Bayley on Bills, 165.)

The general rule in this country, as in England, is that inland bills of exchange and promissory notes need not be protested for non-acceptance or for non-payment. (*Miller v. Hackley*, 5 Johns. 675.)

No. 968.

Notice to indorser, etc., of demand and refusal of payment of promissory note or draft.

\$——.

[—— BANK], ——, N. Y., —— 1 ——.

Take notice that the promissory note (or, draft) made (or, drawn) by you [or, by C. W. (upon F. P.)], for —— ¹⁰⁰ dollars (and interest), dated ——, 1 ——, payable to your order (or, to the order of A. B.; or, to bearer), at ——, payable this day (indorsed by you), is protested for non-payment (or, non-acceptance), and that A. B., the holder, looks to you for the payment thereof, payment (or, acceptance) of the same having been this day (or, on the —— day of ——, 1 ——), duly demanded and refused.¹

Your obedient servant,

C. S.,

Notary Public.

To M. N. (and P. F.)

1. Due presentment for payment and notice of non-payment to the indorsers of a promissory note are conditions precedent to the liability of the indorsers. (*Cayuga Co. Bank v. Warden*, 1 N. Y. 417.)

The same rule applies to the drawer or indorser of a bill of exchange. (*Wing v. Terry*, 5 Hill, 161; *Commercial Bank of Albany v. Hughes*, 17 Wend. 97.)

A notice that in terms, or by necessary implication or reasonable intendment, informs the indorser that the note has become due, and has been presented to the maker, and payment refused, is sufficient. (*Hodges v. Shuler*, 22 N. Y. 114, 118, affg S. C., 24 Barb. 68.)

Such a notice is invalid only when it fails to give that information which it would have given but for its par-

ticular imperfection; and even in case the notice itself be defective, if, from evidence *aliunde* of the attendant circumstances, it is apparent that the indorser was not deceived or misled as to the identity of the dishonored note, he will be charged. (Id., p. 119.)

A note is well described when its maker, payee, date, amount, and time and place of payment are stated. (Id. 119.)

See, also, *The Artisans' Bank v. Backus* (36 N. Y. 100, 106, aff'g S. C., 31 How. Pr. 242); *Cayuga Co. Bank v. Warden* (1 N. Y. 413; S. C., 6 id. 19); *Cook v. Litchfield* (9 id. 279; S. C., 2 Bosw. 137); *Youngs v. Lee* (12 N. Y. 551); *Home Ins. Co. v. Green* (19 id. 518); *Wynn v. Alden* (4 Den. 163); *Dole v. Gold* (5 Barb. 490); *Knopfel v. Seufert* (11 N. Y. Leg. Obs. 184); *McButt v. Hogo* (2 Hilt. 31); *Pahquioque Bank v. Martin* (11 Abb. Pr. 291); *Davenport v. Gilbert* (6 Bosw. 179); *De La Hunt v. Higgins* (9 Abb. Pr. 422); *Walmsley v. Acton* (44 Barb. 312); *Bank of Cooperstown v. Woods* (28 N. Y. 545); *First Nat. Bank of Groton v. Crittenden* (2 T. & C. 118); *Arnold v. Kinlock* (6 Alb. L. J. 196, rev'g S. C., 50 Barb. 94); *Lake Shore Nat. Bank v. Butler Colliery Co.* (51 Hun, 63; 20 N. Y. State Rep. 688, 3 N. Y. Supp. 771); *Gessar v. Smith* (18 N. Y. State Rep. 1013; 2 N. Y. Supp. 655), further as to sufficiency of notice, and of service thereof.

Notice of the dishonor of a note or bill need not be in writing; verbal notice is sufficient. (*Woodin v. Foster*, 16 Barb. 146; *Cuyler v. Stearns*, 4 Wend. 566; *Cayuga Co. Bank v. Warden* 1 N. Y. 413, 417.)

Where the maker of a note, on its becoming due, pays part of the amount to the holder, a general no-

tice of non-payment to the indorser, without mentioning the part payment, is good. (*James v. Badger*, 1 Johns. Cas. 131.)

Where the notice was dated on the 4th day of July, and stated that payment had been that day demanded, *held*, that the indorser was discharged. (*Ransom v. Mack*, 2 Hill, 587.)

Where one of a set of exchange has been accepted and protested for non-payment, presenting the protest of the accepted bill, together with one of the set which has neither been accepted nor protested, to the indorser, and demand of payment will be sufficient to charge him. (*Kenworthy v. Hopkins*, 1 Johns. Cas. 107.)

As to time of service of notice, see *Cuyler v. Stevens* (4 Wend. 566); *Howard v. Ives* (1 Hill, 263); *West River Bank v. Taylor* (7 Bosw. 466); *Farmers' Bank of Bridgeport v. Vail* (21 N. Y. 485); *Etheridge v. Ladd* (44 Barb. 69); *Smith v. Poillon* (87 N. Y. 590); *Sylvester v. Crohan* (138 N. Y. 195). As to manner of service, see *Ransom v. Mack* (2 Hill, 587); *Sheldon v. Benham* (4 Hill, 129); *Laws of N. Y. of 1857*, chap. 416, § 3, p. 839; *Laws of 1835*, chap. 141, § 1, p. 152; *N. Y. R. S.*, 7th ed., 2245, 2246; *Manufacturers and Traders' Bank v. Hazard* (30 N. Y. 226); *Bartlett v. Robinson* (39 id. 187, aff'g S. C., 9 Bosw. 305); *West River Bank v. Taylor* (34 N. Y. 128); *Chapman v. Union Bank* (32 How. Pr. 95); *Ward v. Perrin* (54 Barb. 89); *Fassin v. Hubbard* (55 N. Y. 465); *Requa v. Collins* (51 id. 144); *Gawtry v. Doane* (51 id. 84, aff'g S. C., 48 Barb. 148); *Harden v. Boyce* (59 id. 425); *Hubbard v. Matthews* (54 N. Y. 43); *Greenwich Bank of N. Y. v. De Groot* (7 Hun, 210); *Mechanics and Traders' Bank v. Crow* (5 Daly, 91); *Baer v. Lippert* (12 Hun, 516); *Wyner v.*

Scheppert (6 Daly, 558; S. C., 55 How. Pr. 156); Price v. McGoldrick (2 Abb. N. C. 69); Black v. Ryder (5 Daly, 304); Borst v. Winkel (14 Hun, 138); House v. Vinton Co. Nat. Bk., (1 N. E. Rep. 129, 135); Betts v. Cox (2 City Ct. 31).

The indorser may, prior to maturity, waive the conditions of demand and notice of non-payment. The waiver may be made either verbally or in writing. It is not necessary

that the waiver should be direct and positive. It may result from implication and usage, or from any understanding between the parties which is of a character to satisfy the mind that a waiver is intended. The assent must, however, be clearly established and will not be inferred from doubtful or equivocal acts or language. (Cady v. Bradshaw, 116 N. Y. 188; 20 N. Y. State Rep. 518.)

See, also, chapter 612 of Laws of New York of 1897.

No. 969.

Form of agreement of waiver of demand and notice by indorser.

I, C. B., do hereby, for value received, waive demand, notice of demand, and non-payment, protest, and notice of protest of the within note (or, of the note of A. F., for — dollars, dated —, 1—, payable to my order (or, to the order of A. F.) — after date, at, etc., with interest).¹

Dated —, 1—.

C. B.

1. In a strict and technical sense, the term *protest*, when used in reference to commercial paper, means only the formal declaration drawn up and signed by a notary; but in a popular sense, and as used among men of business, it includes all the steps necessary to charge an indorser. Therefore, when an indorser of a note, before its maturity, wrote to the holder, saying: "Please not protest T. B. C.'s note, due, etc., and I will waive the necessity of the protest thereof," held, that this dispensed with a demand of the maker and notice to the indorser. (Coddington v. Davis, 1 N. Y. 186, aff'g

S. C., 3 Den. 16.) See, also, Buckley v. Bentley (42 Barb. 646); Same v. Same (48 id. 283); De Groot v. Blake (Anth. N. P. 297); Oswego Bank v. Knowler (Hill & D. Supp. 122); Harrington v. Dorr (3 Robt. 275); Porter v. Kemball (53 Barb. 467); Sheldon v. Horton (43 N. Y. 93); Prout v. Pickering (56 id. 650); Driggs v. Driggs (11 N. Y. State Rep. 256); Nat. Hudson River Bank v. Reynolds (57 Hun, 307; 31 N. Y. State Rep. 124; 10 N. Y. Supp. 669); Cady v. Bradshaw, cited in note 1 to last form, No. 968, generally as to waiver.

CHAPTER XXXVI.

Forms of Proof of Loss by Fire to Insurance Company.

- No. 970. Notice to insurance company of loss by fire.
 971. Statement of loss by fire to insurance company.
 972. Same statement, another form.
 973. Same statement, when claim does not exceed one hundred dollars.
 974. Schedule of property and appraisal of damages to be annexed to form No. 972.

No. 970.

Notice to insurance company of loss by fire.

To the (name of company) :

The building owned by me, situated on — street, in the (city) of —, and which was insured by your company, by policy No. —, was injured or destroyed by fire this morning. The origin of the fire was (briefly stating same) (or, is to me unknown). The proofs of loss will be forwarded to your company as soon as they can be prepared.¹

Dated —, 1 —.

A. B.

1. The condition in a fire insurance policy requiring immediate notice of loss and proof thereof within sixty days is a precedent one, and its non-performance is a bar to a recovery on the policy. (Quinlan v. Providence Washington Ins. Co., 39 N. Y. State Rep. 820; 15 N. Y. Supp. 317.) Notice written thirty-three days after loss, *held*, not a sufficient compliance with the condition, and failure to furnish proofs of loss until seven months had elapsed, *held*, also, a bar. (Id.)

The objection on the ground of

the want of immediate notice is waived by the acceptance of formal proofs of loss without objection on that ground, the refusal to pay being on the ground that the policy had been canceled, and it appearing that the company's agent was at the fire, and that its general officers knew of the fire soon after it happened. (Heimann v. Niagara Fire Ins. Co., 100 N. Y. 411.)

See, also, Guffey v. N. Y. Central Ins. Co. (100 N. Y. 417); Brown v. London Ins. Corp. (40 Hun, 101); Sergeant v. London, Liverpool and Globe Ins. Co. (85 Hun, 231); Corbett v. Spring Garden Ins. Co. (Id., 250).

No. 971.

Statement of loss by fire to insurance company.

No. of policy.

Amount of policy.

\$_____

To the (insert name of company), of _____:

By your policy of insurance, No. _____, issued at _____, dated _____, 1____, commencing the _____ day of _____, 1____, and expiring the _____ day of _____, 1____, at 12 o'clock, noon, you insured A. B. against loss or damage by fire to the amount of _____ dollars, according to the terms and conditions printed therein, the written portion and all indorsements, transfers and assignments being as follows: (Here insert same in full.) Which said policy was continued in force by Renewal No. _____, until the _____ day of _____, 1____, at 12 o'clock, noon.

The total insurance on said property, or any part thereof, at the time of the fire, including the above mentioned policy, was _____ dollars (\$ _____), and no more, as specified in "Schedule A" hereto attached. Full copies of the written portions of all policies and indorsements are hereto annexed, or will be furnished on demand.

The property described in said policy belonged at the time of the fire hereinafter mentioned, to me, A. B. (or, to C. D.), and no other person or persons had any interest therein, except as mentioned below.

That said real estate is owned in *fee simple* (or, held on lease for _____ years.)

The nature and amount of incumbrance at time of the fire, upon said property, was as follows: (stating same). The building described, or containing the property described in said policy, was occupied at the time of the fire as follows: (stating occupation), and for no other purpose.

No assignment, or transfer, or incumbrance, or change of ownership or occupancy of the property described has been made since the issue of said policy, except as follows: (state assignment, etc.).

PROOF OF LOSS BY FIRE TO INSURANCE CO. 1077

A fire occurred on the — day of —, 1—, about the hour of — o'clock, — M. The cause of said fire was (stating origin of fire so far as known to deponent).

The actual cash value of each specific subject thus situated and described by the aforesaid policy at the time of loss, and the actual loss and damage by said fire to the same, as shown by annexed Schedule "B," and for which claim is hereby made, was as follows:

| | Sound value. | Total loss. | Total insurance. | Amount named in this policy. | Claimed under this policy. |
|-----------------------------|--------------|-------------|------------------|------------------------------|----------------------------|
| First item of policy | | | | | |
| Second item of policy | | | | | |
| Third item of policy... .. | | | | | |
| Fourth item of policy | | | | | |
| Fifth item of policy..... | | | | | |
| Total... .. | | | | | |

Amount claimed of this company, — dollars (\$—).

The said fire did not originate by any act, design or procurement on the part of assured, or this affiant, or in consequence of any fraud or evil practice done or suffered by said assured, or this affiant; nothing has been done by or with the privity or consent of the assured, or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein but such as were in the building damaged or destroyed, and belonging to and in possession of the said assured at the time of the said fire; no property saved has been in any manner concealed, and no attempt to deceive the said company, as to the extent of said loss, has in any manner been made.

Any other information that may be required will be furnished on call, and considered a portion of these proofs.

[It is expressly stipulated that there has been no waiver of any of the rights or defenses of this company by the furnishing of this "Proof of Loss" blank to the assured, or

making up of proofs by an adjuster, or any agent of the company or companies named herein, or in any other way whatever.]

Witness my hand at the (city) of —, this — day of —, 1—.¹

(Signature of claimant.)

Personally appeared A. B., signer of the foregoing statement, who made solemn oath to the truth of the same, and that no material fact is withheld that the said company should be advised of, before me, this day of —, 1—.

— —,
— —.

STATE OF —, }
County of —, } ss.:

I, A. B., of, etc., a (stating official title of magistrate), residing in the (city) of —, most contiguous to the property hereinbefore described, hereby certify that I am not concerned in the loss or claim above set forth, either as a creditor or otherwise, or related to the assured or sufferers; that I have examined the circumstances attending the fire and damage as alleged, and that I am well acquainted with the character and circumstances of the assured, and do verily believe that the assured has by misfortune, and without fraud or evil practice, sustained loss and damage on the property described in said policy to the amount of — dollars.

In testimony whereof, I have hereunto set my hand and [L. S.] official seal this — day of —, A. D., 1—.

A. B.,
(Official description.)

SCHEDULE "B" — STATEMENT OF LOSS.

| | |
|--|--|
| | |
|--|--|

(Indorsed):—

Claim No. _____,

PROOF OF LOSS.

Policy No. _____

Amount of Policy \$ _____

Assured _____

Date of Fire _____

Proof Received _____

Amount Claimed \$ _____

Amount Allowed \$ _____

Less Discount \$ _____

Amount Paid \$ _____

Adjuster.

Paid _____ I _____

1. See note 3 to form No. 972.

No. 972. .

Statement of loss by fire to insurance company, another form.

To the (name of company).

STATE OF —, }
County of —, } ss.:

On this — day of —, A. D. 1—, before me A. B., a (notary public) duly commissioned and sworn, and residing in the (city) of —, in the said county and State, personally came M. N. (and O. P.) (inserting name or names of insured or assignee), who, being duly sworn, deposes and says (or, depose and say) (and each for himself says). That the following statement, and the papers referred to therein, and signed by him (or, them) contain a particular, just and true account of his (or, their) loss, as follows, viz.:

1. That on the — day of —, A. D. 1—, the said company, by its policy of insurance No. —, issued by it (or, by its agent C. R.) at the (city) of —, in the State of (New York) insured him (or, C. D.) against loss or damage by fire to the amount of — dollars, etc. (here insert in full the written part of the policy) for the term of (one year) from the — day of —, A. D. 1—, to the — day of —, A. D. 1— (which policy was continued by renewal thereof No. — from the — day of —, A. D. 1—, to the — day of —, A. D. 1—), at noon.

2. That in addition to the amount of insurance made by said policy, there was (— dollars of other concurrent insurance, made thereon, as will appear from the schedule hereto annexed, marked Schedule A, which shows the name of each company, the date, time and amount of each policy (the rate of premium and the entire written portion thereof, besides which there was) no other insurance thereon.

3. That the actual cash value of the property so insured amounted to the sum of — dollars, at the time immediately preceding the fire, hereinafter mentioned, as will appear by the schedule hereto annexed, marked Schedule B, containing a full and accurate description of each kind of property.

and the value thereof, and of the loss and damage on each separately stated.¹

4. That the said property insured was owned by (stating names of owners of property and their interests, and in case of real estate, stating whether it is owned in fee simple or held by lease).

5. That the building insured (or, containing the property destroyed or damaged) was occupied in its several parts by the persons (and, corporations) hereinafter named, and for the following purposes, namely : (stating same) and for no other purposes whatever.

6. That a fire occurred on the — day of —, A. D. 1 —, by which the property insured was destroyed or injured to the amount of — dollars, as set forth in this statement and the several schedules and papers annexed thereto, which the deponent (or, deponents) declares (or, declare) to be a just, true and faithful account of his (or, their) loss, so far as he (or, they) have been able to ascertain the same. And the insured (or, said assignee) claims (or, claim) of the said (name of company) the sum of — dollars, as follows: — dollars on (stating property); — dollars on (stating property, and so on as to each parcel).²

7. That the said fire originated (stating manner, so far as known), and this deponent (or, these deponents) further declares (or, declare) that the said fire did not originate by any act, design or procurement on his (or, their) part, or in consequence of any fraud or evil practice done or suffered by him (or, them), and that nothing has been done by his (or, their) privity or consent to violate the conditions of said insurance, or to render the said policy void; and that he (or, they) will, when required by said company, furnish full particulars exhibiting the construction of the building insured (or, containing the said property insured), its dimensions and condition at the time of said fire, and such further information as shall be required by said company concerning the said property, the damage thereto and the insurance thereon.

8. That there was an incumbrance by — upon said property at the time of said fire, amounting to the sum of —

dollars (or, that there was, at the time of said fire, no incumbrance upon said property).

(Signature of claimant.)

Witness, etc. (as in form No. 971).³

(Jurat, as in form No. 32.)

(Annex schedules and papers referred to in statement, and certificate of magistrate, following last form, No. 971.)

1. If the property was held in trust, and Mersey Co. Marine Ins. Co., 38 Hun, 246.)

or on commission, state in the schedule the names of the owners, marks and numbers, and the insurance, if any there be, made by the consignees or owners thereof.

2. State the property in parcels, so as to correspond with the subdivisions of the policy.

3. The necessity of furnishing proofs of loss as required by the terms of the policy, *held*, waived by a letter from the company's general agent, admitting the receipt of proofs of loss, and denying all liability on other grounds. (Boice v. Thames and Mersey Co. Marine Ins. Co., 38 Hun, 246.)

See, also, Craighton v. Agricultural Ins. Co. (39 Hun, 319); Dowd v. American Fire Ins. Co. (41 id. 139); Clover v. Greenwich Ins. Co. (101 N. Y. 277); O'Reilly v. Corporation of London Assurance (19 N. Y. Week. Dig. 147); Bennett v. Agricultural Ins. Co. (15 Abb. N. C. 234); Aldrich v. Home Ins. Co. (20 N. Y. Week. Dig. 70); Chamberlain v. Insurance Co. of N. A. (3 N. Y. Supp. 701; 20 N. Y. State Rep. 543); Moore v. Hanover Fire Ins. Co. (71 Hun, 199); McNally v. The Phoenix Ins. Co. (137 N. Y. 389), among other recent cases.

No. 973.

Statement of loss, when claim does not exceed one hundred dollars, with receipt therefor.

To the (name of company) of —.

STATE OF —, }
County of — } ss.:

A. B., of, etc, being duly sworn according to law, deposes and says, that the (insert name of company), through its agency at the (city) of —, did issue to deponent (or, to C. D.) its policy of insurance, No. — (renewed by renewal receipt, No. —), said policy expiring on the — day of —, 1—, and insuring as follows: \$— on —, \$— on — (and so on as to each parcel insured), and that by a fire which occurred on the — day of —, 1—, and originated from (stating origin of fire so far as known), the assured has sustained actual loss and damage, under the terms of said

policy, according to statements attached hereto as follows:
 \$— on —, \$— on — (and so on as to each parcel,
 as above, corresponding with policy). There was an incum-
 brance (or, incumbrances) upon said property to the amount
 of — dollars.

That the following is a list of the whole insurance on said
 property, and the amount of claim against each company:
 (Name of company) insurance company, insures \$—, pro-
 portion is \$—, (name of company) insures \$—, propor-
 tion is \$—.

(Insert here the clause of form No. 971, beginning: That
 the said fire did not originate, etc.)¹

A. B.,
 Claimant.

(Jurat, as in form No. 32.)

I hereby certify that the above claim is just and true, to
 the best of my knowledge and belief.

C. D.,
 Agent.

\$—. —, —, 1—.

Received of the — insurance company of —, through
 C. D., its agent at the (city) of —, the sum of — dollars,
 being in full satisfaction of all claims for partial loss or dam-
 age by fire under its policy, No. —, issued at the — agency
 of the said company, and in consideration of said payment,
 the sum insured is reduced that amount, leaving — dollars
 now in force on said policy.

Having signed duplicate receipts.

A. B.

Date of fire —, 1—.

PROOF OF LOSS BY FIRE TO INSURANCE CO. 1085

Indorsed : —

Insurance Company of

STATEMENT OF LOSS.

Assured

Agency.

POLICY No. _____

On _____ \$ _____

On _____ \$ _____

\$ _____

Amount of Claim _____

Amount Awarded _____

Date of Fire _____

Proofs Received _____

Paid by _____

1. See note 3 to form No. 972.

No. 974.

Schedule of property and appraisal of damages, to be annexed to form No. 972.

SCHEDULE "B," REFERRED TO IN ANNEXED STATEMENT.

| Quantity. | NAMES OF ARTICLES. | CASH VALUE. | | APPRAISED DAMAGES. | |
|-----------|--------------------|-------------|------------|--------------------|------------|
| | | Particular. | Aggregate. | Particular. | Aggregate. |
| | | | | | |

Protest — Notice of.

See Promissory Notes, etc.

CHAPTER XXXVII.

Forms of Receipts.

No. 975. Receipt for money, articles, etc.

No. 975.

Receipt for money, articles, etc.

§——.

Received this (or, the) —— day of ——, 1——, from A. B. (by the hand of C. D.), the sum of —— dollars [or, the following articles (books, papers, etc.), viz.: (describing them); or, the articles, etc., described in the annexed schedule] on account of (or, in full of) amount due me for interest (or, principal) upon his bond and mortgage (or, for rent upon lease of premises No. ——, etc. falling due ——, 1——, or, in full of all demands against him; or, state other purpose of payment, or manner in which payment is to be applied, or purposes, etc., for which articles, etc., are delivered).²

E. F.

[by G. H., his Agent (or Attorney)].

1. A receipt in full is open to proof that no money was paid, but only a check given in payment, which was dishonored. (Houston v. Shindler, 11 Barb. 36.)

A receipt, whether in full, or otherwise, is only *prima facie* evidence of the facts stated therein, and may be controverted or explained by parol evidence. This grows out of the fact that a receipt is not a contract, but a mere declaration or admission in writing. (Serat v. Smith, 61 Hun, 36, 44; Ryan v. Ward, 48 N. Y. 207.)

2. The rule allowing parol evidence to vary or explain a receipt is limited to a technical receipt in the strict sense of that term, and not to a clause in the nature of the contract. (Graves v. Friend, 5 Sandf. 568.)

An instrument in writing, in form as follows: "Received, Brookfield, July 11, 1849, of Wm. D. Knap, \$40, in full, for damages done to us by the stage accident of the 13th June last," is not a simple receipt which can be varied or explained by parol evidence; it is in the nature of a release, and in evidence of a satis-

faction of the claim of the person making it, and unless shown to have been obtained by fraud, bars such claim. (*Coon v. Knap*, 8 N. Y. 402.)

A receipt of payment for a bill of goods, unexplained or uncontradicted, is conclusive against a recovery for the goods. (*Lambert v. Siely*, 17 How. Pr. 432.)

Payment of a less sum though accepted in full of a certain debt, and receipt in full therefor and for all demands, given, is not good as an accord and satisfaction. (*Harrison v. Close*, 2 Johns. 448; *Seymour v. Minturn*, 17 id. 169; *Dederick v. Leman*, 9 id. 333.)

See, also, *Thomas v. McDaniel* (14 Johns. 185); *Green v. Rochester Iron Manuf. Co.* (1 T. & C. 5); *Rourke v. Story* (4 E. D. Smith, 524); *Bogart v. Van Velsor* (4 Edw. 718); *Buchanan v. Cheseborough* (5 Duer, 238); *Jenner v. Joliffe* (9 Johns. 381); *Riley v. White* (6 N. Y. Leg. Obs. 292); *Buckingham v. Oliver* (3 E. D. Smith, 129); *Taylor v. Harlow* (11 Barb. 36); *Hendrickson v. Beers* (6 Bosw. 639); *Brewster v. Silence* (8 N. Y. 213); *Higby v. N. Y. & Harlem R. R. Co.* (3 id. 497); *Bates v. Cobb* (5 id. 29); *Van Nest v. Talmadge* (17 Abb. Pr. 99); *Sheldon v. Atlantic Fire & Marine Ins. Co.* (26 N. Y. 460); *Buswell v. Poiner* (37 id. 312);

McDougall v. Cooper (31 id. 498); *Eaton v. Alger* (2 Keyes, 41); *Baker v. Union Life Ins. Co.* (6 Abb. Pr. N. S. 144); *Colburn v. Lansing* (46 Barb. 37); *Coulter v. Board of Education, etc.*, of N. Y. (4 Hun, 569); *Joslyn v. Capron* (64 Barb. 598); *Churchill v. Bradley* (43 N. Y. Super. 170); *Smith v. Holland* (61 N. Y. 635); *Howe Machine Co. v. Fagan* (8 Hun, 174); *Cutter v. Mayor* (14 N. Y. Week. Dig. 296); *Swift v. State of New York* (89 N. Y. 52, rev'g S. C., 26 Hun, 508); *Fredenburg v. Biddlecome* (17 N. Y. Week. Dig. 25); *People, ex rel. McDonough, v. Buffalo State Asylum* (96 N. Y. 640); *Brewer v. Union Pacific R. R. Co.* (31 Hun, 545); *Ricard v. Laytin* (2 Dem. 587); *Peck v. Peck* (20 N. Y. Week. Dig. 83; aff'd, 99 N. Y. 608); *Bedell v. Van Hage* (24 N. Y. Week. Dig. 273); *Matter of Dunkel* (5 Dem. 188); *Fickett v. Cohn* (16 N. Y. State Rep. 709); *Danziger v. Hoyt* (46 Hun, 270; aff'd, S. C., 120 N. Y. 190); *Baker v. Union Mut. Life Ins. Co.* (43 N. Y. 283, rev'g S. C., 6 Abb. N. S. 144); *McKenzie v. Harrison* (120 N. Y. 260); *Behrman v. Linde* (23 N. Y. State Rep. 490; 5 N. Y. Supp. 898); *Pfeiffer v. Campbell* (111 N. Y. 631); *Serat v. Smith* (61 Hun, 36); *Grossman v. Dodd* (63 id. 324), further as to effect of receipt.

CHAPTER XXXVIII.

Forms of Recognizances.

- No. 976. Recognizance of prisoner with sureties for his appearance.
 977. General form of recognizance.

No. 976.

Recognizance of prisoner with sureties for his appearance.

STATE OF NEW YORK, }
County of —, ss.:

Be it remembered, that on this — day of —, 1—, C. D., of, etc., and F. M., of, etc., a (state occupation) and G. H., of, etc., a (state occupation) personally appeared before M. N., a justice of the Supreme Court (or, name court or magistrate) and jointly and severally acknowledged themselves to be indebted to the people of the State of New York, in the sum of — dollars, to be levied of their respective goods and chattels, lands and tenements, to the use of said people, if default shall be made in the conditions following:

Whereas, C. D., above named, is in the custody of the sheriff of the said county of —, under a commitment from N. O., a justice of the peace for the town of —, in said county, from which commitment it appears that the said C. D. is charged with the crime of (naming it) committed within said county (or, state otherwise according to the facts). And whereas, an order was made by Hon. F. H., a justice of the Supreme Court, dated —, 1—, directing the discharge of the said C. D., upon bail being given by him, in the sum hereinafter mentioned, for his appearance at the term of the court hereinafter mentioned, as required by law (or, state other matters, as required):

Now, therefore, the condition of this obligation is such, that (if the said C. D. shall personally appear at the next

court of —, to be held in and for said county of —, then and there to answer to an indictment to be preferred against him for the said offense and further to do and receive what shall, by the said court, be then and there enjoined upon him, and shall not depart the said court without leave), then this recognizance to be void; otherwise to remain in full force and virtue.¹

C. D. [L. S.]

F. M. [L. S.]

G. H. [L. S.]

Subscribed and acknowledged before me the day and year first above written, by (C. D.)² F. M. and G. H.

M. N.,

Judge, etc.

STATE OF NEW YORK, } ss.:
 — County, }

F. M. and G. H., being severally duly sworn, each for himself deposes and says, that he is one of the sureties named in the foregoing recognizance; that he is a resident and householder of the county of —, and is worth the sum of — dollars³ over and above the demands against him.

F. M.

G. H.

(Jurat, as in form No. 32.)

(Approval, substantially as in form No. 302.)⁴

1. A recognizance is defined to be an obligation of record, entered into before a court or officer duly authorized for that purpose, conditioned to do some act required by law therein specified. (*People v. Felton*, 36 Barb. 429.)

It is not necessary to set forth therein the offense with the particularity required in an indictment. (*People v. Blankman*, 17 Wend. 252.)

A recognizance taken pursuant to 2 New York Revised Statutes, 746, § 24, must be entered in the minutes of the court, and the entry must con-

tain all the substantial parts of the indebtedness; an entry of the fact that the recognizance was taken is not sufficient. (*People v. Graham*, 1 Park. Cr. 141.)

See, also, *People v. Kane* (4 Den. 530, overruling *People v. Koeber*, 7 Hill, 39; and *People v. Young*, id. 44); *People v. Hammond* (26 N. Y. State Rep. 486; 7 N. Y. Supp. 219); *People v. Hickey* (5 Daly, 365; aff'd. 59 N. Y. 83); *People v. Scott* (67 N. Y. 585); *People, ex rel. Devlin, v. Oyer and Terminer* (7 Hun, 114), as to form and effect of recognizance.

As to filing same, see Laws of N. Y. of 1861, p. 781, chap. 333, § 2.

2. Failure of the principal to acknowledge his signature to an undertaking for his appearance for trial does not affect the liability of the sureties who have properly executed it. (People v. Hammond, 26 N. Y. State Rep. 486; 7 N. Y. Supp. 219.) See, also, note 3 to this form, and section 2046 of N. Y. Code of Civil Procedure therein referred to:

3. Twice the sum in which he is required to be bound. This affidavit is required by section 2046 of N. Y.

Code of Civil Procedure in proceedings upon *habeas corpus* or *certiorari* to inquire into the cause of detention.

It is not necessary in that proceeding that the prisoner should appear in person before the judge to acknowledge the recognizance, but it may be acknowledged by the prisoner, and certified in like manner as a deed to be recorded in the county.

4. This certificate is required in the case provided for in section 2046 of N. Y. Code of Civil Procedure, cited in note 3 to this form.

No. 977.

General form of recognizance.

COUNTY OF —, ss.:

We, A. B. and C. D., acknowledge ourselves to be jointly and severally indebted to the people of the State of (New York) in the sum of — dollars, to be paid if default shall be made in the condition following:

The condition of this recognizance is such, that if, etc. (stating same), then this recognizance to be void, otherwise to be and remain in force.¹

M. F. [L. S.]

G. R. [L. S.]

Taken, subscribed and acknowledged (in open court) the — day of —, in the year 1—, before me.

(Signature and title of Magistrate or Clerk.)

1. See note 1 to last form, No. 976.

Releases.

See Agreements; Deeds.

Sheriff's Certificates.

See Deeds.

CHAPTER XXXIX.

Forms of Shipping Articles.**No. 978. Shipping articles.****No. 978.****Shipping articles.**

It is agreed, between the master and seamen or mariners of the (name of ship), of which A. M. is master, now bound from the port of —, for —, ' That in consideration of the monthly or other wages against each respective seaman or mariner's name hereunto set, they severally shall and will perform the above mentioned voyage; and the said master doth hereby agree with, and hire the said seamen or mariners for the said voyage, at such monthly wages or prices, to be paid pursuant to this agreement, and the laws of the congress of the United States of America, and the custom and usage of the port of —. And they, the said seamen or mariners, do hereby promise and oblige themselves to do their duty, and obey the lawful commands of their officers on board the said vessel, or on board the boats thereunto belonging, as becomes good and faithful seamen or mariners; and at all places where the said vessel shall put in, or anchor at, during the said voyage, to do their best endeavors for the preservation of the said vessel and her cargo, and not to neglect or refuse doing their duty by day or night, nor shall go out of the said vessel, on board any other vessel, or on shore, under any pretense whatsoever, without leave first obtained from the captain, or commanding officer on board. That in default thereof they will be liable to the penalties mentioned in the act of congress for the government and regulation of seamen in the merchants' service, in which is enacted, " That if any seaman or mariner shall absent himself from on board the

ship or vessel, without leave of the master, or officer commanding on board; and the mate, or other officer having charge of the log-book shall make entry therein of the name of such seaman or mariner on the day on which he shall so absent himself; and if such seaman or mariner shall return to his duty within forty-eight hours, such seaman or mariner shall forfeit three days pay for every day which he shall so absent himself, to be deducted out of his wages; but if any seaman or mariner shall absent himself for more than forty-eight hours at one time, he shall forfeit all the wages due to him, and all his goods and chattels which were on board the said ship or vessel, or in any store where they may have been lodged at the time of his desertion, to the use of the owners of the ship or vessel; and, moreover, shall be liable to pay to him or them all damages which he or they may sustain, by being obliged to hire other seamen or mariners in his or their place." And it is further agreed, by both parties, that each and every lawful command which the said master shall think necessary hereafter to issue, for the effectual government of the said vessel, suppressing immorality and vice of all kinds, be strictly complied with, under the penalty of the person or persons disobeying forfeiting his or their whole wages, or hire, together with every thing belonging to him or them on board said vessel. And it is further agreed, that no officer or seaman, belonging to the said vessel, shall demand or be entitled to his wages, or any part thereof, until the arrival of the said vessel at —, the port of her discharge, and her cargo delivered.

And it is further agreed between the master and officers of the said vessel, that whatever apparel, furniture and stores each of them may receive into their charge, belonging to said vessel, shall be accounted for on her return; and in case anything shall be lost or damaged through their carelessness or insufficiency, it shall be made good by such officer or seaman by whose means it may happen, to the master and owner of the said vessel. And whereas, it is customary for the officers and seamen, on the vessel's return home, in the harbor, and whilst her cargo is delivering, to go on shore each night to sleep, greatly to the prejudice of such vessel

and freighters, be it further agreed by the said parties, that neither officer or seaman shall, on any pretense whatsoever, be entitled to such indulgence, but shall do their duty by day in discharge of her cargo, and keep such watch by night as the master shall think proper to order, for the preservation of the same. And whereas, it often happens that part of the cargo is embezzled after being safely delivered into lighters, and as such losses are made good by the owners of the vessel, be it therefore agreed, by these presents, that whatever officer or seamen the master shall think proper to appoint, shall take charge of her cargo in the lighters, and go with it to the lawful quay, and there deliver his cargo to the vessel's husband, or his representative, or see the same safely landed. That each seaman and mariner who shall well and truly perform the above mentioned voyage (provided always that there be no plunderage, embezzlement or other unlawful acts committed on the said vessel's cargo or stores) shall be entitled to the payment of the wages or hire that may become due to him, pursuant to this agreement, as to their names is severally affixed and set forth.

For the due performance of each and every of the above mentioned articles and agreements, and acknowledgment of their being voluntary and without compulsion or any other clandestine means being used, agreed to and signed by us; and in testimony thereof, we have each and every one of us affixed our hands, the month and day against our names affixed, and in the year of our Lord one thousand — hundred and ——. ²

(Signatures of master and seamen.)

| TIME AGREED TO ENTER ON BOARD FOR DUTY. | Men's names. | Stations. | Witnesses to their signing. | Advance wages. | Wages per month. | Privilege. | Time of discharge. | Months and days in pay. | Whole wages. | Hospital money. |
|--|-----------------|-----------|-----------------------------------|-------------------|---------------------|------------|-----------------------|----------------------------|-----------------|--------------------|
| | | | | | | | | | | |

1. Under U. S. Revised Statutes, § 4520, shipping articles signed by a seaman at Philadelphia, describing the voyage as "from that port to Portland, Maine, thence to one or more ports east, if required by the master, and back to a western port of discharge, term not to exceed two months," are sufficiently precise and definite to be binding upon the parties. (*U. S. v. Bain*, 5 Fed. Rep. 192.)

Where a mariner shipped on a voyage to the Pacific ocean, "or elsewhere," on a trading voyage, and from thence back to Boston, with a stipulation that two months' wages should be paid at Canton, the voyage being in fact a trading voyage to the north-west coast for furs,—*Held*, that the outward voyage terminated at Canton, and a return to the north-west coast from Canton was not authorized; and that therefore it was not a desertion in the mariner to leave the ship at Canton, the ship being about to return to the north-west coast. (*Brown v. Jones*, 2 Gall. 477.)

The words "or elsewhere" are either void for uncertainty, or are to be construed in subordination to the principal voyage. (*Id.*)

Where the shipping articles do not describe the voyage in compliance with the requirements of the acts of 1790 and 1840, the seaman may leave the vessel at any time. (*Snow v. Wope*, 2 Curt. 301, aff'g 1 Sprague, 300; 8 L. Rep. N. S. 390.)

Where, in the original articles for a whaling voyage, the time of its continuance, though agreed upon, was accidentally omitted to be written out, *held*, that the defect could be supplied by written evidence. (*The Antelope*, 1 Low. 130.)

2. See U. S. Rev. Stats., §§ 4511–4523, formerly act of June 7, 1872, chap. 332, amd. by act of January 15, 1873, chap. 35; 17 Stat. 410.

Previous statutes to similar effect were act of July 20, 1790, 1 Stat. 131; act of July 20, 1840, 5 Stat. 394.

What vessels and voyages, and what seamen were within the provisions of the acts of 1790 and 1840, above referred to, requiring shipping articles in writing, see *The Lanthe* (3 Ware, 126); *The Australia* (*id.* 240); *Gladding v. Constant* (1 Sprague, 73); *Ex p. D'Oliveira* (1 Gall. 474); *The John Martin* (2 Abb. U. S. 172); *Woolverton v. Lacy* (8 L. Rep. N. S. 672); *Graham v. The Exporter* (21 Int. Rev. Rec. 110); *Re Bryant* (Deady, 118); *The City of Fremont* (2 Biss. 415).

In what cases shipping articles must be signed in presence of a shipping commissioner, under the act of June 7, 1872, or Rev. Stat., §§ 4511, 4512, above referred to, see *U. S. v. The Grace Lathrop* (95 U. S. 527, aff'g 1 Holmes, 342); *U. S. v. City of Mexico* (11 Blatchf. 489, aff'g 7 Ben. 31).

The provision of the act of July 10, 1840, as to interlineations in shipping articles, applies only to alterations which would vary their effect in respect to the seamen. (*The Eagle*, Olc. 232.)

It is not necessary, under title 35 of the U. S. Rev. Stats., that shipping articles should be signed before the seaman is received on board. (*United States v. Thomas W. Haven*, 3 Fed. Rep. 347.)

If signed after the vessel has left her port of departure, they are not binding upon the seaman; but he may leave the vessel at any time without incurring the penalties of desertion. (*The Theodore Perry*, 24 Int. Rev. Rec. 54.)

Seamen may be forbidden by the shipping articles to wear sheath knives; also may be discharged for a refusal to provide themselves with suitable clothing and bedding for the voyage. (*The George Burnham*, 1 Hask. 381.)

CHAPTER XL.

**Forms in Proceedings Before Magistrates
Respecting the Support of Bastards and
of Poor Persons.**

TITLE I.

PROCEEDINGS RESPECTING SUPPORT OF BASTARDS.

- No. 979. Application to inquire into the facts as to bastards.
- 980. Examination of mother before magistrate.
- 981. Warrant for arrest of reputed father.
- 982. Indorsement on warrant to be executed out of the county.
- 983. Indorsement on warrant by magistrate in another county.
- 984. Undertaking of father on arrest under warrant, form No. 983.
- 985. Certificate of discharge to be indorsed on warrant.
- 986. Undertaking upon adjournment of examination before two magistrates.
- 987. Subpœna to attend before magistrates on examination.
- 988. Warrant for mother to testify on examination.
- 989. Form of order of filiation or discharge.
- 990. Undertaking to be given by the defendant, under order of filiation, form No. 989.
- 991. Warrant of commitment of defendant.
- 992. Order of filiation made in the absence of the reputed father, who has been arrested in another county.
- 993. Warrant of commitment of mother who refuses to disclose the name of the father.
- 994. Summons to mother possessed of property in her own right.
- 995. Order upon return of summons, form No. 994.
- 996. Undertaking by mother, to appear at the next Court of Sessions, to answer concerning matters stated in order, form No. 994.
- 997. Order of magistrates reducing the amount to be paid by the parent.
- 998. Notice of application to Court of Sessions for increase or reduction of amount directed to be paid by parent.
- 999. Notice of appeal from the order of two magistrates.

No. 979.**Application to inquire into the facts as to bastard.**

COUNTY OF —, ss.:

To I. F., Esq., a justice of the peace (or, police justice) of the county of —:

The undersigned, a superintendent of the poor (or, overseer of the poor) of (the town of —, in) said county (or, name other officer or officers making the application) hereby makes (or, make) application to you, pursuant to statute in such case provided, to inquire into the facts and circumstances of the case of A. B., who has been (or, is likely to be) delivered of a bastard, which is chargeable (or, is likely to become chargeable) to (the town of —, in) the said county.

Given under my (or, our) hand (or, hands) at —, this — day of —, 1—.¹

A. M.
(Official title.)

1. See N. Y. Code of Criminal Procedure, § 840, as to this application, and see, also, Sprague v. Eccleston (1 Lans. 74); Wallsworth v. McCullough (10 Johns. 93); Birdsall v. Egerton (25

Wend. 619); Rivenburgh v. Hennes (4 Lans. 209).

See, also, ch. 225 of Laws of New York of 1896, article 4; also ch. 272 id., § 18, Burke v. Burpo (75 Hun, 568).

No. 980.**Examination of mother before magistrate.**

COUNTY OF —, ss.:

C. D., of the town of —, in said county, being duly sworn, says: That she was, on the — day of —, 1—, delivered of a bastard child, which is (or, that she is now with child, and the child of which she is pregnant is likely to become) chargeable to the (town of — in) said county, and that E. F., of —, is the father of such child.¹

(Jurat, as in form No. 32.)

C. D.

1. See section 841 of the New York Code of Criminal Procedure as to this deposition, and see People v. Overseers of Ontario (15 Barb. 286).

No. 981.**Warrant for arrest of reputed father.**

COUNTY OF — ss.:

To any peace officer of the county of —, greeting:

Whereas, application has been made to me by A. M., an overseer of the poor of the town of — in said county (or, one of the superintendents of the poor of the said county of —; or, insert other official description), in order to indemnify the said town (or, county) to inquire into the facts and circumstances of the case of A. B., of —, in said county, who has been delivered (or, is likely to be delivered) of a bastard, which is chargeable (or, likely to become chargeable) upon said town (or, county). And, whereas, said A. B., upon her examination on oath before me, the undersigned, a justice of the peace of said county, this day had, did declare that, etc. (as in the examination, form No. 980).

You are, therefore, hereby commanded, pursuant to statute, in the name of the people of the State of New York, without delay to apprehend the said E. F., and bring him before me, at my office in —, aforesaid, for the purpose of having an adjudication as to the filiation of said bastard

Given (as in form No. 979).¹

M. N.,

Justice of the Peace.

1. See section 841 of the New York Code of Criminal Procedure, as to this warrant and its issue

No. 982.**Indorsement on warrant to be executed out of the county.**

I, the within named justice of the peace (or, police justice) hereby direct that the sum in which the defendant therein named shall give security, shall be — dollars.¹

I. F.,

Justice of the Peace.

1. See section 843 of the New York Code of Criminal Procedure, as to this indorsement, which is to be made, if the defendant resides in another county than that in which the warrant is issued.

No. 983.**Indorsement on warrant by magistrate in another county.**

COUNTY OF —, ss.:

The within warrant, with the indorsement made thereon by the magistrate by whom it was issued, of the sum in which the defendant shall give security, having been presented by the officer to whom it was issued, to me, the undersigned, a (justice of the peace) of and residing in the said (county) of —; and proof having been made to me, by the oath of M. N., of the signature of the magistrate who issued the said warrant, I do hereby direct that said warrant be served in the said county of —, in which he resides.

Given, etc. (as in form No. 979).¹I. P.,
Justice of the Peace.

1. See section 843 of the New York Code of Criminal Procedure, as to this indorsement. Upon the above proof, the magistrate indorsing the warrant is, by that section, exempted from liability to a civil or criminal action, though it afterward appear that the warrant was illegally or improperly issued.

No. 984.**Undertaking of father on arrest under warrant, form No. 981.**

Whereas, E. F. has been brought before me, M. N., a justice of the peace of the county of —, by virtue of a warrant issued by R. S., a justice of the peace of the county of —, whereon my name (or, the name of L. M.) is indorsed, with authority to arrest the said E. F., in the said county of —, in which warrant it is recited that A. B., of —, in said county of —, upon her examination on oath before the said R. S., testified that she was on the — day —, 1—, delivered of a bastard child, which is (or, that she was with child, and that the child with which she was pregnant was likely to become) chargeable to (the town of —, in) said county of —, and that said E. F. was the father of said child:

Now, therefore, we, E. F., etc., do hereby, jointly and severally, undertake, pursuant to statute, that the said E. F. and G. H., of, etc. (state occupation), and I. J., of, etc. (state occupation), will indemnify the said (town of —, in the said) county of —, and every other county, town or city, against any expense for the support of said bastard, or of its mother during her confinement and recovery, and will pay the costs of arresting the said defendant, and of any order of filiation that may be made, or that the said sureties will pay the sum indorsed on the warrant,¹ to wit, the sum of — dollars (or, that the said defendant will appear and answer the charge at the next Court of Sessions of the said county of —, and obey its order thereon.)²

In witness, etc. (as in form No. 181).

(Signatures.)

Signed and delivered in my }
 presence, and the sureties }
 approved of, by me.

M. N.,

Justice of the Peace.

1. See section 844 of the New York Code of Criminal Procedure, as to this bond, and see, also, *People v. Meighan* (1 Hill, 298); *People v. Mitchell* (4 Sandf. 466); *Hoogland v. Hudson* (8 How. Pr. 343); *People v. Tilton* (13 Wend. 597).

2. Section 845, id., provides that when either of the undertakings mentioned in the last section is given, the magistrate must discharge the defendant. If the first requirements are inserted, omit the one in parenthesis; but if the requirement in parenthesis is inserted, omit the previous ones. (See authorities above cited in note 1 to this form.)

If the reputed father of the child does not pay the amount certified for the costs of apprehending him, the justices may issue a warrant for his commitment, though he has executed the undertaking. (*People, ex rel. Overseer of Hastings, v. Stowell*, 2 Dem. 127.)

When the undertaking has been given, but the costs are not paid, the warrant should direct the father to be safely kept until discharged by the Court of General Sessions, or until he shall pay the costs. (Id.)

No. 985.

Certificate of discharge to be indorsed on warrant, on giving of undertaking, form No. 984, by defendant.

COUNTY OF —, ss.:

I hereby certify that the within named defendant, who was brought before me, a justice of the peace of the county of —, by virtue of the within warrant, was discharged from arrest by me upon his executing an undertaking, pursuant to the statute, and paying the amount certified for the costs of his arrest and of the order of filiation.¹

Given, etc. (as in form No. 979).

M. N.,

Justice of the Peace.

1. See section 845 of the New *ex rel.* Overseers of Hastings v York Code of Criminal Procedure, Stowell (2 Den. 127), cited in note to as to this certificate; and see People, last form, No. 984.

No. 986.

Undertaking upon adjournment of examination before two magistrates.

Whereas, E. F., of —, has been this day brought before — and —, two of the justices of the peace of the county of —, charged upon the oath of A. B., of —, to be the reputed father of a bastard child, with which the said A. B. alleges she is pregnant (or, of which said A. B. alleges that she has lately been delivered), the said justices being associated, pursuant to statute, to inquire into the charge, and determine who is the father of the bastard (or, of such child likely to be born a bastard). And whereas, upon the application of the said defendant, and for good cause, the said magistrates have determined to adjourn the examination of said matter, and their determination thereupon, upon the execution of this undertaking, until the — day of —, 1—, at — o'clock in the — noon, at the office of the said —, in, etc.:

Now, therefore, we, the said E. F. and M. R., of, etc. (state occupation), and P. F., of, etc. (state occupation), do hereby

jointly and severally undertake, pursuant to statute, that the said E. F. will appear before the said magistrates at the said time appointed, or that the said M. R. and P. F. will pay the sum of — dollars.

In witness, etc. (as in form No. 181.)¹

(Signatures.)

(Attestation and approval, as in form No. 984.)

1. See section 849 of the New York Code of Criminal Procedure as to this undertaking. The sum mentioned therein must be a full indemnity for the expense of supporting the bastard and its mother, as provided in section 851, id. See, also, *People v. Jayne* (27 Barb. 58); *People v. Boardman* (24 How. Pr. 512).

No. 987.

Subpœna to attend before magistrates on examination.

To I. J. and K. L.:

You and each of you are hereby commanded and required personally to be and appear before — and —, two of the justices of the peace of the county of —, forthwith (or, on the — day of —, 1—, at — o'clock in the — noon), at the office of —, at —, in said county, to testify what you know touching the father of a bastard child, wherewith A. B. alleges that she is pregnant (or, of which A. B. has lately been delivered).¹

Witness my hand at —, this — day of —, 1—.

M. N.,

Justice of the Peace.

1. See sections 846-852 of the New York Code of Criminal Procedure, as to this examination.

No. 988.

Warrant for mother, to testify upon examination.

COUNTY OF — ss.:

To any peace officer of the county of —, greeting:

Whereas, we, the undersigned, two justices of the peace of said county, have, upon the application of —, an overseer of the poor of the town of —, in said county (or.

naming other applicant or applicants), associated, pursuant to statute, for the purpose of examining into the matter of a complaint made by said (naming applicants) that A. B., of said town, is now pregnant with a child which is likely to be born a bastard (or, has lately been delivered of a bastard child, in said town), which has become (or, is likely to become) a charge upon said town (or, county), and E. F., of —, having been brought before us this day, charged as being the putative father of said child. (*)

Now, therefore, in order that the said A. B. may be examined before us on oath, and in the presence of the said E. F., touching the father of said child, you are hereby commanded to bring the said A. B. forthwith before us, at —. in —, aforesaid.

Given etc. (as in form No. 979)

(Signatures of justices.

Justices, etc.

No. 989.

Form of order of filiation or discharge.

As in form No. 988, to (*), and from thence as follows: And said A. B., having been duly examined by us, on oath, in the presence of the said E. F., touching the father of said child, and we having also heard the proofs and allegations to us offered in regard thereto, as well on the part and behalf of said applicant (or, applicants) as of the said E. F.; whereby (†) it appears that the said A. B. was, on the — day of — last, delivered of a bastard child in said town (or, is now pregnant of a child, which, when born, will be a bastard), and which is chargeable (or, is likely to become chargeable) upon said town (or, county), and that the said E. F. is (or, is not) the father of such bastard child:

Now, therefore, we do hereby adjudge the said E. F. to be (or, not to be) the father of said bastard child; and further, we do hereby order that the said E. F. (*) pay to the overseer of the poor in said town (or, to the superintendents of the poor of said county), for the support of said bastard, the sum of — dollars weekly (or, state how otherwise pay-

able), so long as the said child shall continue chargeable to said town (or, county); and, it having appeared to us, and we having found that said A. B. is indigent, we determine and order that the said E. F. pay to the said overseer (or, superintendent) of the poor, for the support of said A. B., the sum of — dollars, during her confinement and recovery. And we do hereby certify the reasonable costs of arresting the defendant, and of this order of filiation, at the sum of — dollars (or, as above, to (*), and from thence as follows: be forthwith discharged).¹

Given, etc. (as in form No. 979).²

(Signatures of Justices).

Justices, etc.

1. Insert these words in parentheses following the (*), in case the defendant is found not to be the father of the child, in place of the other provisions of the order.

2. See section 850 of the New York Code of Criminal Procedure, as to this order and its form and contents.

See, also, *Thayer v. Overseers of Hamilton* (5 Hill, 443); *Stowell v. Overseers of Volney* (5 Den. 98); *People, ex rel. Dumont, v. Tompkins General Sessions* (19 Wend. 154); *People v. Moores* (4 Den. 518); *People, ex rel. Commissioners, v. Dando* (20 Abb. N. C. 245).

No. 990.

Undertaking to be given by the defendant, under order of filiation, form No. 989

COUNTY OF —, ss.:

Whereas, by an order this day duly made and subscribed by (naming justices) justices of the peace, of the said county, it is adjudged that E. F., of, etc., is the reputed father of a bastard child of which A. B. was delivered, on the — day of —, 1— (or, is likely to be delivered), and which is (or, is likely to become) chargeable to the (town of — in the) said county, and it is thereby ordered that (here insert the provisions of the order):

Now, therefore, we, the said E. F. and O. R., of, etc. (stating occupation), and T. U., of, etc. (stating occupation), do hereby jointly and severally undertake, pursuant to statute, that the said E. F. will (*) pay

weekly (or, state how otherwise) the sum of — dollars, directed by said order for the support of said child (and the sum of — dollars, for the support of A. B., the mother of said child, during her confinement and recovery), or which may be ordered by the Court of Sessions of the said county of —, and that he will indemnify the said county and the town (or, city) of —, in said county, and every other county, town or city, which may have been or may be put to expense for the support of the said bastard, or of its said mother, during her confinement and recovery, against those expenses, or that the said O. R. and T. U. will do so, not exceeding the sum of — dollars.

(Or, as above to (*)) and from thence as follows: will appear at the next Court of Sessions of said county of —, to answer the charge and obey its orders thereon, or that the said O. R. and T. U. will pay a sum equal to a full indemnify for supporting the said bastard and its mother, as provided in the first subdivision of section 844 of the Code of Criminal Procedure.)

In witness, etc., as in form No. 181.¹

(Attestation and approval, as in form No. 984.)

E. F.
O. R.
T. U.

1. See section 851 of the New York Code of Criminal Procedure. as to this undertaking, which is to be entered into by defendant if he is adjudged to be the father, and he must immediately pay the amount certified for the costs of arrest and of the order of filiation, and thereupon the magistrates must discharge him. And see section 852 of that Code as to proceedings in case he fails to make such payment and give such

undertaking; and see *People v. Tilton* (13 Wend. 597); *People, ex rel. Commissioners, v. Dando* (20 Abb. N. C. 245); *People v. Meighan* (1 Hill, 298); *People v. Mitchell* (4 Sandf. 466); *Hoogland v. Hudson* (8 How. Pr. 343); *People v. Moores* (4 Den. 518); *People v. Stowell* (2 id. 127); *Ramsey v. Overseers of Town of Luzerne* (34 Hun, 329); *Tillotson v. Martin* (40 id. 316).

No. 991.

Warrant of commitment of defendant.

COUNTY OF —, ss.:

To any peace officer of the said county, greeting:

Whereas, by an order of filiation made by us, this day, at —, in said county, we, the undersigned, justices of the peace of the said county, did adjudge and determine E. F. to be the father of a bastard child, of which A. B. was heretofore delivered (or, is likely to be delivered), and did thereupon order that the said E. F. pay, etc. (reciting contents of the order), and having made and subscribed said order, we did require the said E. F. to pay immediately the costs so certified, and to enter into an undertaking, with sureties, as required by statute, to be by us approved. And, whereas, due notice of our said order has been given to the said E. F., but he has wholly neglected either to pay the said costs and charges or to enter into such undertaking:

You are, therefore, hereby commanded, in the name of the People of the State of New York, to convey the said E. F. to the county jail of said county (or, to the city prison of said city),¹ the keeper whereof is hereby required to receive and detain the said E. F. in custody in said jail (or, prison) until he shall be discharged by the Court of Sessions of said county, or shall deliver the said undertaking (and pay the said amount certified as costs of his said arrest, and of the said order of filiation).²

In witness, etc. (as in form No. 181).³

(Attestation and approval, as in form No. 984.)

(Signatures.)

1. In the city of New York the commitment is to be made to the city prison of that city. (N. Y. Code Crim. Proc., § 852.)

2. The statute, however (§ 852, above cited), does not require the warrant to provide for the payment of these costs and charges, as a condition of the defendant's release, unless the words "or deliver an undertaking, as prescribed by the last section" include their payment, as to which see *People, ex rel. Overseer of Hastings, v. Stowell* (2 Den. 127.)

3. See section 852 of the New York Code of Criminal Procedure, as to this warrant.

During the examination and until the defendant is discharged by the magistrate, he must remain in the custody of the officer who arrested him, unless an undertaking has been given for his appearance, as provided

in sections 844 and 849, id.; and when committed to prison he must be actually confined therein. (Id., § 853.) See, also, *People v. Stowell* (2 Den. 127); *People, ex rel. Commissioners, v. Dando* (20 Abb. N. C. 248).

No. 992.

Order of filiation made in the absence of the reputed father, who has been arrested in another county.

COUNTY OF —, ss.:

C. D., the defendant, having been arrested by virtue of a warrant and the indorsements duly made thereon, of which copies are hereto annexed, marked Schedules A and B (or, of all of which the following are copies: inserting them), and having been brought before M. N., Esq., a justice of the peace of the county of —, who took from him a bond to the people of the State, with good and sufficient sureties, in the sum directed by indorsement upon said warrant, with conditions prescribed by section 844 of the Code of Criminal Procedure, that the defendant would appear and answer the charge at the next Court of Sessions of the county of —, and obey its order therein; and the said bond having been in due form of law returned to the undersigned, —, the justice who issued the said warrant, he, the said last mentioned justice, thereupon immediately called to his aid the undersigned —, another justice of the said county of —, and the said justices proceeded to make examination of the matter on the — day of —, 1—, at— in said town, and then and there heard the proofs that were offered in relation thereto, whereby (concluding as in form No. 989, from (+)).¹

1. See sections 854 and 855 of New York Code of Criminal Procedure, as to this order. By the latter section the examination may be had and the order made in the absence of the defendant, unless, before the order is

made, he require of the magistrate issuing the warrant that the examination be had in his presence, in which case the examination must be had as if the defendant had originally appeared.

No. 993.

Warrant of commitment of mother who refuses to disclose the name of the father.

COUNTY OF —, ss.:

To any peace officer of the county of —, greeting:

Whereas, etc., as in form No. 988, to (*), and from thence as follows: and have required the said A. B., who is now before us, to submit to an examination on oath, in the presence of C. D., who has been brought before us, charged with being the father of said child, to testify concerning the said charge, and to disclose the name of the said father, but the said A. B. wholly refuses to testify and to make such disclosure; and it having appeared to us by due proof given on oath before us that (more than) a month has expired since the said A. B. was delivered of said child, and that she is sufficiently recovered from her confinement:

You are, therefore, hereby commanded, in the name of the people of the State of New York, to take the said A. B. and convey her to the county jail of said county (or, to the city prison of the city of New York), the keeper whereof is required to detain the said A. B. in his custody in said jail (or, prison) until she shall so testify and disclose the name of the father of such child.

Given, etc. (as in form No. 979.)¹

1. See section 856 of the New York Code of Criminal Procedure, as to this warrant, and see *Scott v. Ely* (4 Wend. 555).

No. 994.

Summons to mother possessed of property in her own right.

COUNTY OF —, ss.:

To any peace officer of the county of —, greeting

You are hereby required to summon A. B., of —, in said county, to appear before us, the undersigned, two justices of the peace of said county, at —, in the — of —, on the — day of —, 1— (or, instant), at — o'clock in the

— noon, to show cause, if any she have, why an order should not be made by us, pursuant to statute, for the support, by her, of a bastard child said to have been recently born of the said A. B., and chargeable (or, likely to become chargeable) to (the town of —, in) said county, by charging the said A. B. with the payment of money weekly, or otherwise, for the support of the said bastard, an application having been made to us for that purpose by M. N., an overseer of the poor of said town (or, a superintendent of the poor of said county).¹

Given, etc. (as in form No. 979).

M. F.,
I. J.,
Justices.

1. See section 857 of the New York Code of Criminal Procedure, as to this proceeding, and see, also, *People v. Corbett* (8 Wend. 520).

No. 995.

Order upon the return of summons, form No. 994.

COUNTY OF —, ss.:

Whereas, an application has been made by M. N., an overseer of the poor of the town of —, in the said county (or, by J. K., one of the superintendents of the poor of said county), to us, the undersigned, two justices of the peace of said county, complaining that A. B., of —, in said county, was lately delivered at —, aforesaid, of a bastard child, which is (or, is likely to become) chargeable to said town (or, county); and that said A. B. is possessed of property in her own right, and is able to support said child, and desiring an examination by us into such matters, and an order made by us charging the said A. B. with the payment of money weekly or otherwise for the support of said bastard. And whereas, upon examination into the matter of said application, and upon due proof made thereof, given before us on oath, and the said A. B. being present at said examination, and having shown no sufficient cause to the contrary (or, having neglected to appear and show cause to the contrary;

if any she might have, she having been duly summoned and required so to appear):

We do, therefore, hereby order the said A. B. to pay weekly to said overseer (or, superintendent) the sum of — dollars, for the support of said bastard child (unless she shall herself nurse and take care of the said child).¹

Given, etc. (as in form No. 979).²

M. F.,
I. J.,
Justices.

1. This clause in parenthesis is sometimes inserted as may be necessary.

2. See section 857 of New York Code of Criminal Procedure, as to this proceeding. If after service of this order upon the mother, she does not comply therewith, she must be committed to the county jail, or in the city of New York to the city prison of that city, until she comply,

or enter into an undertaking, with sufficient sureties, approved by the magistrates, to the effect that she will appear at the next Court of Sessions of the county, to answer the matters stated in the order, and obey its order thereon, or that the sureties will pay the sum mentioned in the undertaking, and which must be fixed by the magistrate.

No. 996.

Undertaking by mother, to appear at the next Court of Sessions, to answer matters stated in order, form No. 995.

Whereas, an order was made on the — day of —, 1—, pursuant to statute, by A. M. and M. N., two justices of the peace of the county of —, by which it was directed that A. B. pay weekly to F. G., overseer of the poor of the town of — in the county of — (or, to G. H., superintendent of the poor of the county of —), the sum of — dollars, for the support of a bastard child born of her, and with which the said town (or, county) was (or, was likely to become) chargeable. And, whereas, service of said order was made upon the said A. B., and she has not complied therewith, but intends to enter into this undertaking, as required by law, in order to prevent her being committed to the county jail of — county (or, to the city prison of the city of —):

Now, therefore, we, said A. B. and O. P., of, etc. (stating occupation), and L. M., of, etc. (stating occupation), do hereby jointly and severally undertake, pursuant to statute, that the said A. B. will appear at the next Court of Sessions of the county of —, to answer the matters stated in the said order, and obey its order thereon, or that the said O. P. and L. M., will pay the sum of — dollars.

In witness, etc. (as in form No. 181).¹

(Signatures as in form No. 984.)

1. See section 858 of New York this undertaking, and see *People v. Corbett* (8 Wend. 520).

No. 997.

Order reducing the amount to be paid by parent.

COUNTY OF —, ss.:

To the overseers (or, superintendents) of the poor of the town of — in) said county :

Whereas, we did determine, by an order of filiation, dated —, 1—, that E. F. is the father of a certain bastard child, theretofore lately born in, etc., aforesaid, and did therein, among other things, order, that the said E. F. should pay to you, the said overseers (or, superintendents), the weekly sum of —, so long as the said child should continue chargeable to said town (or, county). And, whereas, we have this day made inquiry, upon the application of the said E. F., into said case, and heard the proofs and allegations submitted to us relating thereto; and it having appeared to us upon such inquiry, that it is proper and expedient that the said sum required by our said former order should be reduced as hereinafter expressed. And, whereas, the said overseers (or, superintendents) have shown no cause before us why such reduction should not be made, although duly notified to appear (and having appeared) before us for that purpose :

Now, therefore, we do hereby reduce the said amount required to be paid weekly by the said E. F., by our said former order, as aforesaid, to the sum of ——.¹

Given, etc. (as in form No. 979).

(Signatures of justices.)

Justices.

1. See section 859 of the New York Code of Criminal Procedure, as to this order, by which section it may be made by the magistrates who have made the original order; and it is further provided by that section that the Court of Sessions of the county may upon the application of the officers mentioned in section 840, id., upon ten days' notice to those officers, or to the father or mother of the bastard, reduce or increase the amount directed to be paid by the order of filiation. For notice of such application, see next form, No. 998.

No. 998.

Notice of application to Court of Sessions for increase or reduction of amount directed to be paid by parent.

COUNTY OF —, ss.:

To E. F. (or, To M. N., overseer or superintendent, etc.):

You are hereby notified that an application will be made by the undersigned at a Court of Sessions of said county, to be held at —, on the — day of —, 1—, at the opening of the court (or, at 10 o'clock in the forenoon), on that day, or as soon as counsel can be heard, to increase (or, reduce) the amount directed to be paid by the order of filiation for the support of the bastard child named in said order, of which a copy is hereto annexed, which said application will be founded on the affidavits, with copies of which you are herewith served.¹

Dated —, 1—.

M. N.,
Overseer, etc.
(or, E. F.)

1. See section 859 of New York Code of Criminal Procedure, cited in note 1 to form No. 997, as to this application and notice thereof

No. 999.**Notice of appeal from the order of two magistrates.**

COUNTY OF —, ss.:

To A. M. and C. N., Esqrs., two justices of the peace of
said county :

You are hereby notified that the undersigned, conceiving
himself aggrieved by the order heretofore made by you, a
copy of which is annexed hereto, hereby appeals to the next
Court of Sessions of the said county.¹

(Signature of appellant.)

1. See section 861 of the New York Code of Criminal Procedure, as to this appeal, and by whom it may be taken.

TITLE II.**PROCEEDINGS FOR SUPPORT OF POOR PERSONS BY THEIR RELATIVES.****No. 1000.** Application for order to compel such support.

1001. Notice of such application.

1002. Order of support.

1003. Warrant for seizure of real or personal property of absconding relative.

1004. Return by overseers of the poor to Court of Sessions as to property of absconding person taken under warrant, form No. 1003.

1005. Bond to be given by absconding person to procure discharge of warrant, form No. 1003.

1006. Order discharging warrant and restoring property seized.

No. 1000.**Application to compel support of poor person by relative.**

To the Court of Sessions of the county of — :

We, A. B. and C. D., overseers of the poor of the town of
—, in the county of — (or, the commissioners of charities and corrections in the city of New York), do hereby make application, pursuant to statute, for an order to compel the relief of M. B., a poor person, who is blind (or, state other infirmity), so as to be unable to maintain himself, and who is in said town (or, county), by C. B., who resides at —, in said town (or, in said county), and is the (father) of

said M. B., and who has failed to relieve and maintain the said M. B. in a manner approved by us, although he is of sufficient ability so to relieve and maintain the said M. B.¹

Dated —, 1—.

A. B.,

C. D.,

Overseers, etc.

1. See, as to this application, section 915 of New York Code of Criminal Procedure. By section 914, id., the father, mother and children, of sufficient ability, of a poor person, who is insane, blind, old, lame or decrepit, so as to be unable by work to maintain himself, must at their own charge, relieve and maintain in a manner to be approved by the overseers of the poor of the town where he is, or in the city of New York, by the commissioners of charities and corrections. See, also, *Stevens v. Cheney* (36 Hun, 3); *Stone v. Burgess* (2 Lans. 439; aff'd, S. C., 47 N. Y. 521); *Edwards v. Davis* (16 Johns. 281); *Stevens v. Carter* (36 Hun, 1).

The statute compelling parents and children to maintain each other, being of sufficient ability, extends only to natural relations. A husband is not bound to maintain the children of his wife by a former marriage; *a fortiori*, he is not bound to maintain his wife's bastard children. (*Minden v. Cox*, 7 Cow. 235.)

There is no common law obligation by which a child is liable to support an infirm and indigent parent; the obligation arises solely from the statute, and can only be enforced in the manner provided thereby. (*Edwards v. Davis*, *supra*; *Herendeen v. De Witt*, 49 Hun, 53.)

See amendment to section 914 N. Y. Code Crim. Pro. by ch. 399 of Laws of 1898.

No. 1001.

Notice of application to be given to relative.

To C. B.:

Please take notice that an application will be made by the undersigned to the Court of Sessions of the county of —, on the — day of —, 1—, at the opening of the court (or, at — o'clock in the — noon) on that day, or as soon thereafter as counsel can be heard, for an order to compel the relief asked for by the annexed application.²

Dated —, 1—.

Yours, etc.

A. M.,

M. N.,

Overseers, etc.

1. The county where the relative dwells. (N. Y. Code Crim. Proc., § 915.)

2. See section 915 of the New York Code of Criminal Procedure, as to this notice, which is directed by that

section to be served upon the person to whom it is directed, at least ten days previous to the application, personally, or by leaving it at the last place of residence of such person, in case of his absence, with a person of suitable age

and discretion. See, also, note 1 to last form, No. 1000.

See amendment to section 915 of N. Y. Code Crim. Pro. by ch. 399 of Laws of 1898.

No. 1002.

Order of Court of Sessions, pursuant to application, form No. 1000.

At a Court of Sessions held in and for the county of —, at —, in the (city) of —, on the — day of —, 1—.

Present: C. R., etc. (naming judges), judges.

In the Matter of the Application of A. M. and M. N.,
Overseers, etc., for the Support of A. B., a Poor Person.

Upon reading and filing the application of A. M. and M. N., overseers of the poor of the town of —, in said county, dated —, 1—, and after hearing the proofs and allegations of the parties, by which it has appeared to the court that M. B., who is in said town, is a poor person, and is blind (or, state other infirmity), and unable to work so as to maintain himself, and that C. B., the father of said M. B. [or, R. B., the son of said M. B., who has no father (of sufficient ability to relieve and maintain him)], is of sufficient ability to relieve and maintain the said M. B., and has neglected to do so, although requested to do so by said overseer:

It is hereby ordered that the said C. B. (or, R. B.) maintain and relieve the said M. B., in a manner to be approved by said overseers, and that for the purpose of such relief and maintenance he pay to the said overseers the sum of —, on (Monday) of each week until the further order of the court, which sum said court hereby adjudges to be necessary for the support of said M. B.

And it is hereby further ordered, that said C. B. pay to the said overseers the sum of — dollars, the costs and expenses of said application.¹

1. See sections 916-918 of the New York Code of Criminal Procedure, as to this order and its contents; as to costs, see section 919. id.

In case one of two persons equally liable is unable to contribute his entire proportion of such support, the court is authorized to require him to contribute according to his ability, and to require the other to pay the residue. An order reciting that the two are of sufficient ability, and directing the proportion which each

one is to pay, if the proportion is unequal, is, in effect, a determination that the one required to pay the less sum is unable to pay his full proportion, but is able to pay the sum fixed, and such order is valid. (*Stone v. Burgess*, 47 N. Y. 521.)

See, also, note 1 to form No. 1000, and see amendments to sections 916-918 and 920 of N. Y. Code Crim. Pro. by ch. 399 of Laws of 1898.

No. 1003.

Warrant for seizure of property of person absconding.

COUNTY OF —, ss.:

To A. M. and M. N. (naming applicant), overseers of the poor of the town of — in said county (or, commissioners of charities and corrections in the city of New York):

It having appeared to us, two justices of the peace (or, police justices) of the said county, by the application of the said overseers of the poor (or, of said commissioners), that F. P., late of said town, has absconded from his wife and children, leaving them (likely to become) chargeable upon the public; and that said F. P. has some real or personal property, situated in said county, and due proof of said facts having been made before us:

We, therefore, hereby authorize you, the said (overseer of the poor), to take and seize the property, real and personal, of said F. P., wherever it may be found in said county; and you will immediately upon such seizure make an inventory of the property so taken, and return the same, together with your proceedings, to the next Court of Sessions of said county.

Given under our hands, at the said town of —, this — day of —, 1—.¹

(Signatures of justices, etc.)

Justices, etc.

1. See section 921, etc., of the New York Code of Criminal Procedure, as to this proceeding.

See, also, *Downing v. Rugar* (21 Wend. 178); *People, ex rel. Reed, v. Overseers of Triangle* (23 Barb. 236).

No. 1004.

Return by overseers of the poor to Court of Sessions as to property of absconding person taken under warrant, form No. 1003.

COUNTY OF —, ss.:

To the Court of Sessions of said county :

The undersigned, to whom the annexed (or, within) warrant is directed, seized by virtue of said warrant, on the — day of —, 1—, in the county of —, therein mentioned, the property mentioned in the annexed inventory, and their proceedings thereupon subsequent to such seizure, are as follows: (stating particularly such proceedings). All of which is respectfully returned.¹

Dated at —, this — day of —, 1—.

(Signatures and official description.)

(Annex inventory.)

1. See section 922 of the New York Code of Criminal Procedure, as to this return and the proceedings of the court thereupon, and see section 1, chapter 304 of the Laws of New York of 1878.

No. 1005.

Bond to be given by absconding person to procure discharge of warrant, form No. 1003.

As in form No. 302, to (*), substituting the words "overseers of the poor of the town of (or, commissioners, etc.)," for the words "The People of the State of New York," and "overseers, etc.," for "people," and from thence as follows: that whereas, the said (overseers of the poor) have lately seized the property of the said F. P., under a warrant issued by — and —, two justices of the peace of the county of —, upon due proof made before them that said F. P. had absconded from his wife and children, leaving them (likely to become) chargeable upon the public, and the said F. P. having returned, and being desirous of having his property so taken returned to him :

Now, therefore, if the said wife and children so abandoned shall not be chargeable to the said town or county, etc., then, etc. (as in form No. 302).¹

(Signatures and seals, as in form No. 302).

Sealed and delivered and the
security approved by us,
two of the justices of the
peace of the town of —
(or other official description).

(Signatures.)

(Official description.)

1. See section 924 of New York Code of Criminal Procedure, as to this security, and the order to be made thereupon.

No. 1006.

Order discharging warrant (form No. 1003), and returning property taken by virtue thereof.

COUNTY OF —, ss.:

To the overseers of the poor of the town of — (or, the commissioners of, etc.):

A warrant having been issued directed to you, dated —, 1—, by which you were authorized to take and seize the property, real and personal, of F. P., upon proof that he had absconded from his wife and children, leaving them (likely to become) chargeable upon the public. And, whereas, the said F. P. has returned and now supports his wife and children so abandoned [or, has given security to the (overseers of the poor) of the town of —, satisfactory to us, that the said wife and children shall not be chargeable either to said (town or county)], we do, therefore, pursuant to statute, hereby discharge the said warrant issued as aforesaid, and direct that the property taken by virtue thereof be restored to said A. B.

Witness our hands at —, this — day of —, 1—. ¹

(Signatures of magistrates.)

(Official title.)

1. See section 924 of New York Code of Criminal Procedure, as to this order.

TITLE III.

FORMS RELATING TO SUPPORT OF POOR BY PUBLIC.

- No. 1007. Notice to overseers of the poor of town in which the pauper has a residence to provide for his support.
 1008. Notice contesting settlement alleged in notice, form No. 1007.
 1009. Subpœna to witness to appear and testify concerning settlement of pauper.
 1010. Decision of superintendents as to pauper's settlement.
 1011. Notice by superintendent that pauper will be supported at the expense of a certain town.
 1012. Order of justice of the peace for temporary relief to a pauper.

No. 1007.

Notice to overseers of the poor of town in which the pauper has a residence, to provide for his support.

COUNTY OF —, ss.:

To the overseers of the poor of the town of — in said county:

You are hereby notified, that C. B., a pauper, who has gained a settlement in your town, to which he belongs, is in the town of —, in said county, and is supported at the expense of said town of —, for which the undersigned are overseers.

You are, therefore, required, pursuant to statute, to provide for the relief and support of the said C. B.

Dated at —, this — day of —, 1—. ¹

(Signatures of overseers.)

Overseers.

1. See 1 New York Revised Statutes, 622, subdivision 4, section 31 (Birdseye's Codes, etc., 2260), as to this notice; and see, also, Holmes v. Brown (13 Barb. 598); Sitterly v. Murray (63 How. Pr. 367).

No. 1008.

Notice contesting settlement alleged in notice, form No. 1007.

COUNTY OF —, ss.:

To the overseers of the poor of the town of —, in said county:

You will please take notice that the undersigned, overseers of the poor of the town of —, in said county, will

appear before the county superintendents of the poor of said county at, etc., on the — day of —, 1—, at — o'clock in the (fore) noon to contest the alleged settlement of C. B., a pauper, as stated in your notice of the — instant.

Dated at —, this — day of —, 1—.¹

(Signatures of overseers.)

Overseers.

1. See 1 New York Revised Statutes, 622, § 32, as to this notice, and note 1 to last form, No. 1007. The day appointed must be at least ten days, and not more than thirty days from the time of service of such notice. (Id.)

No. 1009.

Subpoena to witness to appear and testify concerning settlement of pauper.

COUNTY OF —, ss.:

The People of the State of New York to E. F. (and, G. H.):

You (and each of you) are hereby required to be and appear before the undersigned, superintendents of the poor of said county, at, etc., on the — day of —, 1—, at — o'clock, to testify on behalf of the overseers of the poor of the town of — in said county, concerning the alleged settlement of C. B., a pauper.¹

Dated at —, this — day of —, 1—.

(Signatures.)

Superintendents.

1. See note 1 to form No. 1007, as to this proceeding.

No. 1010.

Decision of superintendents as to pauper's settlement.

COUNTY OF —, ss.:

We, the undersigned, superintendents of the poor of the county of —, having met as required by a notice given, pursuant to statute, by the overseers of the poor of the town of — in said county, and proceeded to hear and determine a controversy which had arisen between them and the overseers of the poor of the town of — in said county, relating to the settlement of C. B., a pauper:

And upon such hearing of the facts relating to said settlement, we do hereby decide that the legal settlement of said C. B. is in the said town of — (or, is not in said town of —).

And we do hereby award to the overseers of the poor of the town of —, the prevailing party, the sum of — dollars, costs of said proceeding expended by them.

Given under our hands and seals, at —, this — day of —, 1—.¹

(Signatures.)

Superintendents.

1. The county superintendents to the prevailing party, which may be shall convene whenever required by recovered in any action before a any overseers, pursuant to such notice, and shall proceed to hear and court of competent jurisdiction. determine the controversy, and may The decision of the superintendents shall be final and conclusive. (1 N. award costs not exceeding ten dollars Y. Rev. Stats. 622, § 33.)

No. 1011.

Notice by superintendent that pauper will be supported at the expense of a town.

COUNTY OF —, ss.:

To the overseers of the poor of the town of —, in said county:

C. B., a pauper, having been sent to the poor house of said county as a county pauper, and we, the undersigned, superintendents of the poor of said county, having made inquiry as to the facts, and being of the opinion that the said B. has a legal settlement in the town of —, in said county, pursuant to statute:

You are hereby notified that the expenses of supporting said pauper will be charged to the said town, unless you, within (twenty days) after the service upon you of this notice, show that the said town of — ought not to be charged with such support.

Dated at —, this — day of —, 1—.¹

(Signatures.)

Superintendents.

1. See section 35 of 1 New York which is to be given within thirty Revised Statutes, 623 (Birdseye's days after such pauper shall have Codes, etc. 2260), as to this notice, been received.

No. 1012.

Order of justice of the peace, for temporary relief to a pauper.

An application having been made by the overseers of the poor of the town of —, to me, a justice of the peace of the said town, in regard to C. B., a person applying to them for relief, and I having examined into the facts, and it having appeared that said C. B. requires only temporary relief [or, is sick, etc. (stating disability), or otherwise disabled, so that he cannot be removed conveniently to the poor house of the county of —], I do hereby order the said overseers to apply — dollars per week for the relief of said C. B., until they shall have expended the sum of — dollars, or such less amount as shall suffice for the temporary relief of said B.

Dated at —, this — day of —, 1—.

(Signature.)

M. N.,

Justice.

1. See section 42 of 1 New York Dominick v. Long Island City (48 Revised Statutes, 624 (Birdseye's Hun, 306); Gere v. Supervisors of Codes, etc., 2262), as to this order, Cayuga Co. (7 How. Pr. 255). and its effect. See, also, Nuns of St.

CHAPTER XLI.

Forms Relating to Towns.

(Laws of N. Y. of 1890, chap. 569.)

TITLE I.

FORMS RELATING TO TOWN MEETINGS, AND THE ELECTION AND TENURE OF TOWN OFFICERS.

(Laws of N. Y. of 1890, chap. 569, art. 2.)

- No. 1013.** Application by fifteen electors of town to determine, at town meeting, where future town meetings shall be held.
1014. Application for special town meeting, by electors.
1015. Notice of special town meeting.
1016. Notice of proposition to be determined by ballot at town meeting.
1017. Notice to be given by the town clerk of such proposed question.
1018. Notice by town clerk to person elected to town office.

No. 1013.

Application by fifteen electors of town to determine, at town meeting, where future town meetings shall be held.

(Laws of N. Y. of 1890, chap. 569, § 11.)

To the town clerk of the town of —, in the county of —:

The undersigned electors of the town of —, in the county of —, hereby make application, pursuant to statute, that it shall be determined at the annual town meeting of said town, to be held at —, on the — day of February, 1—,¹ by ballot, where future town meetings of said town shall be held.²

Dated —, 1—.

(Signatures of electors.)

1. By section 10 of chapter 569 of Laws of New York of 1890, the town meetings, except in counties containing upwards of 300,000 inhabitants, qualified by the Constitution to vote for elective officers, shall be held annually, after the year 1891, on the second Tuesday of February, at such

place in such town as the electors, at their annual town meeting, shall from time to time appoint. See, also, ch. 481 of Laws of New York of 1897, amending §§ 10 and 11 of town law.

2. This application is to be filed with the town clerk twenty days before an annual town meeting. (Laws of N. Y. of 1890, chap. 569, § 11.)

No. 1014.**Application for special town meeting, by tax payers.**

(Laws of N. Y. of 1890, chap. 569, § 25.)

To the town clerk of the town of —, in the county of — :

We, the undersigned, who are tax payers upon the last town assessment roll of said town, do hereby require, pursuant to statute, a special town meeting to be called for the purpose of (raising money for the support of the poor), and for the transaction of such other town business as shall be legally brought before the meeting, such meeting to be held at (the town hall in said town), on the — day of —, 1—, at — o'clock in the — noon, and request you to give due notice thereof.¹

Dated —, 1—.

(Signatures of twenty-five tax payers.)

1. See section 25 of chapter 569 of Laws of New York of 1890, as to special town meetings to be held on request of twenty-five tax payers upon the last town assessment roll, and the purposes for which such meetings may be held. They may also be held on request of the supervisor, commissioners of highways or

overseers of the poor, to determine questions pertaining to their respective duties as such officers, and which the electors of the town have a right to determine. (Same section.) The above form may easily be adapted to the latter cases.

For notice of special town meeting, see next form, No. 1015.

By chapter 481 of Laws of 1897, section 25 of the town law was renumbered as section 23.

No. 1015.**Notice of special town meeting.**

(Laws of N. Y. of 1890, chap. 569, § 26.)

Notice is hereby given, that a special town meeting of the electors and legal voters of the town of —, in the county of —, will be held at the town hall in the said town of —, on the — day of —, 1—, at — o'clock in the — noon, for the purpose of (stating same), and for the transaction of such other town business as shall be legally brought before the meeting.¹

Dated —, 1—.

A. B.,

Town Clerk.

1. Section 26 of chapter 569 of Laws of New York of 1890 provides that no previous notice need be given of the annual town meetings;

but the town clerk shall, at least ten days before the holding of any special town meeting, cause notice thereof under his hand, to be posted conspicuously in at least four of the most public places in the town; which notices shall specify the time, place and purposes of the meeting.

See as to the time and place of holding the annual town meetings, section 10 of same chapter, cited in note 1 to form No. 1013.

By chapter 481 of Laws of New York of 1897, section 26 of the town law was renumbered as section 24 and amended.

No. 1016.

Notice of proposition to be determined by ballot at town meeting.

(Laws of N. Y. of 1890, chap. 569, § 34.)

To the town clerk of the town of — in the county of —:

Application and request is hereby made, that the following question shall be voted on at an (annual) town meeting of the electors and legal voters of said town of —, to be held at the town hall in the said town, on the — day of —, 1—, at — o'clock in the — noon, to wit: (stating proposition).¹

Dated —, 1—.

(Signatures, adding official description when made by town officers.)

(Annex account, etc., in case of town officers applying for money.)

1. No proposition or other matter than the election of officers, shall be voted upon by ballot at any town meeting, unless the town officers or other persons entitled to demand a vote of the electors of the town thereon, shall, at least twenty days before the town meeting, file with the town clerk a written application,

plainly stating the question they desire to have voted upon, and requesting a vote thereon at such town meeting. (Laws of N. Y. of 1890, § 34.) See, also, further requirements of that section, when town officers, as such, make the application for a vote to raise money for purposes pertaining to their duties.

By chapter 481 of Laws of 1897, section 34 of the town law was renumbered as section 32.

No. 1017.

Notice to be given by the town clerk of such proposed question.

(Laws of N. Y. of 1890, chap. 569, § 34.)

Notice is hereby given, pursuant to statute, that the following question is proposed, according to law, by (stating

by whom), to be voted upon at the (annual) town meeting of the electors and legal voters of the town of —, in the county of —, to be held, etc. (stating time and place, as in last form), to wit: (stating question). And that a vote will be taken by ballot upon said question at the above mentioned town meeting.¹

Dated —, 1—.

F. G.,
Town Clerk of said town.

1. This notice is, by section 34 of chapter 569 of Laws of New York of 1890, to be conspicuously posted up at least ten days before the meeting, in at least four of the most public places in the town. See, also, same section, as to further duty of the clerk in regard to the vote upon such proposition.
See, also, note to form No 1016.

No. 1018.

Notice by town clerk to person elected to town office.

(Laws of N. Y. of 1890, chap. 569, § 39.)

To A. G.:

You are hereby notified, pursuant to law, that at an annual town meeting of the electors and legal voters of the town of —, in the county of —, held at the town hall in said town, on the — day of —, 1—, you were duly elected as (supervisor) of said town, to hold your said office (for one year and)¹ until another person has been elected, or appointed, in your place and has qualified.²

Yours, etc.,

M. N.,
Town Clerk of said town.

1. In case of supervisor, town clerk, inspector of election and constable, insert these words in brackets. See sections 12 and 13 of chapter 569 of Laws of New York of 1890, as to terms of office of town officers elected at town meetings.

2. The clerk is required by section 39 of ch. 569 of Laws of New York of

1890, within ten days after the election, to transmit to any person elected to a town office, whose name is not on the poll list as a voter, a notice of his election.

By chapter 481 of Laws of 1897, sections 12 and 13 of the town law were amended, and section 39 of that law was renumbered as section 37.

TITLE II.

FORMS RELATING TO QUALIFICATIONS OF TOWN OFFICERS.

(Laws of N. Y. of 1890, chap. 569, art. 3.)

- No. 1019. Oath of office to be taken and subscribed by town officer.
 1020. Notice by supervisor to collector of amount of taxes.
 1021. Undertaking to be executed by town collector.
 1022. Same by constable.
 1023. Certificate of town clerk to county clerk of officers elected at town meeting.
 1024. Undertaking to be given by justice of the peace.
 1025. Certificate of town clerk of filing of same.
 1026. Undertaking to be given by supervisor.
 1027. Same by commissioners of excise.
 1028. Same by overseer of the poor in town.
 1029. Same by commissioners of highways in towns.
 1030. Notice of acceptance of resignation of town officer.
 1031. Appointment of town officer to fill vacancy.
 1032. Notice to town officer appointed by town board to fill vacancy, of his appointment.

No. 1019.

Oath of office to be taken and subscribed by town officers.

(Laws of N. Y. of 1890, chap. 569, § 51.)

STATE OF NEW YORK, }
County of —, ss.:

I, A. B., do solemnly swear (or, affirm) that I will support the Constitution of the United States and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of (commissioner of highways) of the town of —, in said county, according to the best of my ability.

(And I do further solemnly swear (or, affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute, any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote.)¹

(Jurat, as in form No. 32.)

A. B.

1. This clause, in brackets, is re- State Constitution, as amended by quired by article 12 of the New York popular vote, which amendment took

effect January 1, 1875, to be inserted in the case of all officers who shall have been chosen at any election.

By section 51 of chapter 569 of 1890, it is provided that every person elected or appointed to any town office, except justice of the peace, shall, before he enters upon the duties of his office, and within ten days after he shall be notified of his election or appointment, take and subscribe before some officer authorized by law to administer oaths in his county, the constitutional oath of

office, and such other oath as may be required by law, which shall be administered and certified by the officer taking the same without reward, and shall within eight days be filed in the office of the town clerk, which shall be deemed an acceptance of the office; and a neglect or omission to take and file such oath, or a neglect to execute and file, within the time required by law, any official bond or undertaking, shall be deemed a refusal to serve, and the office may be filled as in case of vacancy.

See, also, amendment of constitution of N. Y. in 1894, and article 13 of section 1, giving form of oath, as above.

No. 1020.

Notice by supervisor to collector, of amount of taxes.

(Laws of N. Y. of 1890, chap. 569, § 51.)

To A. B., collector of the town of —, in the county of —:

You are hereby notified that the amount of taxes to be collected by you in said town of —, for the current year, is — dollars and — cents.

Dated —, 1—.

Yours, etc.,

M. N.,

Supervisor of the said town.

1. See section 51 of chapter 569 in note 1 to last form, No. 1019, as of Laws of New York of 1890, cited to this notice.

No. 1021.

Undertaking to be executed by town collector.

(Laws of N. Y. of 1890, chap. 569, § 52.)

Whereas, the undersigned M. N., of —, has been duly elected (or, appointed) to the office of collector of the town of —, in the county of —, and has received (or, will receive) the assessment roll of said town for the year, 1—, for the purpose of collecting the taxes therein named, amounting to the sum of — dollars:

Now, therefore, we, the said M. N. and E. F., of —, and G. H., of —,¹ do hereby, jointly and severally, undertake and acknowledge ourselves bound to and with the said town, pursuant to statute, in the sum of — dollars,² that the said M. N. will well and faithfully execute his duties as such collector, pay over all moneys received by him, and account in the manner and within the time provided by law for all taxes upon the said assessment roll of said town, delivered to him as aforesaid for the ensuing year.³

Dated —, 1—.

M. N.
E. F.
G. H.

In presence of
A. F.

(Acknowledgment by signers and justification by sureties, as in form No. 220.)

Indorsed:—

I hereby approve of the within undertaking as to the form and sufficiency thereof.

—, 1—.

I. J.,
Supervisor of —.

1. This undertaking is to be executed by the collector, with two or more sureties, before he enters upon the duties of his office, and within eight days after he receives notice of the amount to be collected by him and delivered to the supervisor of the town. (Laws of N. Y. of 1890, chap. 569, § 52.) The supervisor is required, within six days thereafter, to file the undertaking, with his approval indorsed thereon, in the office of the county clerk, who shall make an entry thereof in a book to be provided for the purpose, in the same manner as judgments are entered of record; and every such undertaking shall be a lien on all the real estate held jointly or severally by the collector or his sureties

within the county, at the time of the filing thereof, and shall continue to be such lien until its condition, together with all the costs and charges which may accrue by the prosecution thereof, shall be fully satisfied. (Id., § 53.)

See, also, *Muzzy v. Shattuck* (1 Den. 233); *Ward v. Stahl* (81 N. Y. 406); *Johnson v. Ostrander* (1 Cow. 670); *Upham v. Paddock* (23 Hun, 377).

2. The penalty of the former bond of collector, under 1 R. S. 346, § 19, was double the amount of such taxes. No amount is specified in the act, chap. 569 of 1890, by which the former provision is repealed.

3. See, generally, as to this undertaking, section 52 above referred to.

By section 12 of said chapter collectors are to be elected at the annual town meeting, and are to hold their offices until others are elected or appointed in their places and have qualified. By section 221 of same chapter, in counties containing more than 300,000 inhabitants, collectors are to be elected by ballot by the electors of such towns respectively, at the general election held in such towns, and their terms of office are to be three years from the first day of May next succeeding their election.

By section 66 of chapter 569 of Laws of New York of 1890, it is provided that every undertaking of a town officer, as provided by that chapter or otherwise, must be executed by such officer and his sureties, and acknowledged or proven and certified in like manner as deeds to be recorded, and the approval indorsed thereon. The parties executing such undertaking shall be jointly and severally liable, regardless of its form in that respect, for the damages to any person or party by reason of a breach of its terms.

See, also, amendments to section 53 of the town law by chapter 323 of Laws of New York of 1897 and to section 12 of that law by chapter 481 of Laws of New York of 1897.

No. 1022.

Undertaking to be given by constable.

(Laws of N. Y. of 1890, chap. 569, § 54.)

Whereas, the undersigned, M. G., of —, has been duly elected (or, appointed) to the office of constable of the town of —, in said county of —:

Now, therefore, we, the said M. G. and P. E., of —, and J. S., of —,¹ do hereby, jointly and severally, undertake and acknowledge ourselves bound, pursuant to statute, in the sum of — dollars, to and with said town, that we will pay to each and every person who may be entitled thereto, all such sums of money as the said M. G. may become liable to pay on account of any execution which shall be delivered to him for collection, and will also pay each and every person for any damages which he may sustain from or by any act or thing done by said M. G. by virtue of his said office.²

Dated —, 1—.

M. G.

P. E.

J. S.

In presence of

F. R.,

Supervisor.

(or, E. G., Town Clerk) of the town of —.

(Acknowledgment, by signers, and affidavits of justification by sureties, as in form No. 220.)

(Indorsed) :—

I hereby approve of the within undertaking and of the sureties therein.

Dated —, 1—.

F. R.,
Supervisor.
(or, E. G., Town Clerk.)

1. See section 54 of chapter 569 of Laws of New York of 1890, as to this undertaking. It is required to be executed by the constable, with at least two sufficient sureties, in the presence of the town clerk or supervisor of the town. The town clerk or supervisor is to indorse thereupon

his approval of the sureties, and to cause the same to be filed in the office of such clerk within ten days thereafter.

2. See, also, section 66 of same chapter cited in note 1, form No. 1021, as to general form of undertaking of town officer.

No. 1023.

Certificate of town clerk to county clerk of officers elected at town meeting.

(Laws of N. Y. of 1890, chap. 569, § 57.)

To A. C. N., Esq., county clerk of — county:

I, F. G. (town clerk), of the town of —, in the county of —, do hereby certify, pursuant to statute, that at the annual town meeting of said town, held at the town hall of said town, on the — day of —, 1—, of which I was clerk, C. N. was duly elected supervisor, P. M. was duly elected a justice of the peace, and (naming them) were elected constables in and for such town.¹

Dated —, 1—

F. G.,
(—) Clerk.

1. See section 57 of chapter 569 of Laws of New York of 1890, as to this certificate, which is to be transmitted by the clerk of each town meeting, at which there has been an election for justice of the peace, to the clerk of his county. By section

28 of that chapter, the town clerk last before elected or appointed, or, if he be absent, such person as shall be chosen by the electors present, shall be the clerk of the town meeting.

See, also, amendment to section 57 of town law by chapter 363 of Laws of New York of 1898.

No. 1024.

Undertaking to be given by justice of the peace.

(Laws of N. Y. of 1890, chap. 569, § 58.)

Whereas, the undersigned, D. G., of —, has been duly elected (or, appointed) to the office of justice of the peace of the town (or, city) of —, in the county of —:

Now, therefore, we, the said D. G. and E. R., of —, and J. I., of —, do hereby jointly and severally undertake and acknowledge ourselves bound, pursuant to statute, in the sum of — dollars, to and with said town, that the said D. G. will pay over on demand, to the officer, person or persons entitled to the same, all moneys received by him by virtue of his said office.¹

Dated —, 1—.

In presence of

I. F. and
C. K.D. G.,
E. R.
J. S.

(Acknowledgment or proof and affidavit of justification by sureties, as in form No. 302.)

Indorsed:—

I hereby approve of the foregoing undertaking and of the sureties therein.

Dated —, 1—.

F. C.,
Supervisor (or, Town
Clerk) of the town
of —.

(Or, approved by resolution of common council of the city of —, passed —, 1—.

A. F.,
Clerk.)

1. See section 58 of chapter 569 of Laws of New York of 1890, as to this undertaking, which is required by that section to be given by every justice of the peace elected or appointed in any of the towns or cities of the State, except the city of New York, and any city whose charter requires such officer to give a bond or undertaking, before he enters upon

the duties of his office. The sureties are to be approved by the supervisor of the town, or the town clerk thereof, when the justice of the peace is also supervisor of the town, or the common council of the city in which the justice shall reside. See, further, the provisions of that section, as

to filing the undertaking, and taking oath of office, etc., cited in note 1 to form No. 1025.

See, also, section 66 of same chapter, cited in note 1 to form No. 1021, as to general form of undertaking of town officer, and see chapter 277 of Laws of 1893.

No. 1025.

Certificate of town clerk of filing undertaking by justice of the peace.

(Laws of N. Y. of 1890, chap. 569, § 58.)

COUNTY OF —, }
Town (or, City) of —, } ss.:

I, A. B., town clerk of the said town (or, city clerk of said city), do hereby certify that on the — day of —, in the year 1—, D. G., a justice of the peace of the said town (or, city), duly elected (or, appointed) on the — day of —, 1—, filed in my office the undertaking as such justice required by law to be executed and filed by him, the sureties therein being approved by the supervisor (or, by the town clerk) of said town (or, by the common council of said city).

In witness whereof, I have hereunto set my hand and official seal, this — day of —, 1—.¹

A. B.,

Clerk of the town (or, city) of —.

1. Every justice shall also, on or before the fifteenth day of January next succeeding his election, file with the county clerk a certificate of the clerk of the city or town in which he resides, that he has filed such undertaking, and thereupon take before the county clerk his oath of office; but if elected or appointed to fill a vacancy, at the time existing or in any new town, he shall file such un-

der-taking and certificate and take the oath of office, and enter upon the duties thereof, within fifteen days after notice of his election or appointment. No justice of the peace shall take his oath of office until he shall have filed such certificate with the county clerk. (Laws of N. Y. of 1890, chap. 569, last clause of section 58.)

No. 1026.

Undertaking to be given by supervisor.

(Laws of N. Y. of 1890, chap 569, § 60.)

Whereas, the undersigned C. D., of —, has been duly elected (or, appointed) to the office of supervisor of the town of —, in the county of —:

Now, therefore, we, the said C. D. and E. F., of —, and G. H., of —,¹ do hereby, jointly and severally, undertake and acknowledge ourselves bound, pursuant to statute, to and with said town, in the sum of — dollars, that said C. D. (*) will well and faithfully discharge his official duties as such supervisor, and that he will well and truly keep, pay over and account for all moneys and property, including the local school fund, if any, belonging to his said town and coming into his hands as such supervisor.²

Dated —, 1—

In presence of

A. M.

C. D.

E. F.

G. H.

(Acknowledgment or proof, as in form No. 89, and justification of sureties, as in form No. 220.)

Indorsed:—

I hereby certify that the within undertaking was approved by resolution of the town board of the town of —, in the county of —, passed at a meeting of said board held on the — day of —, 1—, as to its form and the sufficiency of the sureties therein.³

Dated —, 1—.

M. P.,

Clerk of Town Board of the town of —.

1. Such sureties as the town board shall prescribe.

2. See section 60 of chapter 569 of Laws of New York of 1890, as to this undertaking generally. It is to be made and delivered by the supervisor to the town clerk of the town,

within thirty days after entering upon his office.

3. Such undertaking shall, after its execution, be presented to the town board for their approval as to its form and the sufficiency of the sureties therein, and until the same shall

have been so approved, none of the moneys, books, documents, papers or property of the town shall be turned over or delivered to such supervisor elect. (Section 60, *supra*.)

See, also, section 66 of same chapter 569 generally as to undertaking of town officers, cited in note 1 to form No. 1021, and see Matter of Bradley (141 N. Y. 527.)

No. 1027.

Undertaking to be given by commissioner of excise in town.

(Laws of N. Y. of 1890, chap. 569, § 61.)

Whereas, I, the undersigned C. D., of —, have been duly elected (or, appointed) to the office of commissioner of excise of the town of —, in the county of —:

Now, therefore, I, the said C. D., do hereby undertake and acknowledge myself bound, pursuant to statute, to and with said town, in the sum of — dollars, that I will pay over to the supervisor of said town, within thirty days after the receipt thereof, all moneys received by me as such commissioner of excise.¹

(Signature, as in form No. 1026.)

In presence of

A. M.

(Acknowledgment, etc., as in form No. 89.)

(Approval by supervisor, as in form No. 1021.)

1. This undertaking is to be executed by the commissioner before he enters upon the duties of his office, and delivered to the supervisor, and by him filed in the office of the town clerk within ten days thereafter. No sureties are required by the statute.

(Laws of N. Y. of 1890, chap. 569, § 61.)

See, also, as to form of undertaking by town officers, section 66 of same chapter, cited in note 1 to form No. 1021.

No. 1028.

Undertaking of overseer of the poor in town.

(Laws of N. Y. of 1890, chap. 569, § 62.)

As in form No. 1026, substantially to (*), changing word "supervisor" therein to "overseer of the poor," and from thence as follows:

Will faithfully discharge the duties of his office, and will pay, according to law, all moneys which may come into his hands as such overseer.¹

Dated —, 1—.

(Signatures, as in form No. 1026.)

In presence of

M. N.

(Acknowledgment, etc., as in form No. 220.)

(Approval by supervisor, as in form No. 1021.)

1. To be executed by the overseer, with one or more sureties, and delivered to the supervisor, and filed by him in the office of the town clerk within ten days thereafter. (Laws of N. Y. of 1890, chap. 569, § 62.)

See, also, as to form of undertaking given by town officers, section 66 of same chapter, cited in note 1 to form No. 1026.

No. 1029.

Undertaking to be given by commissioner of highways of town.

(Laws of N. Y. of 1890, chap. 569, § 63.)

As in form No. 1026, substantially, substituting therein for word "supervisor" the words "commissioner of highways," and from thence as follows:

Will faithfully discharge his duties as such commissioner, and within ten days after the expiration of his term of office, pay over to his successor all moneys remaining in his hands as such commissioner, and render to such successor a true account of all moneys received and paid out by him as such commissioner.¹

Dated —, 1—.

(Signatures, as in form No. 1026.)

In presence of

M. N.

(Acknowledgment, etc., as in form No. 220.)

(Approval by supervisor, as in form No. 1021.)

1. To be executed by the commissioner of highways, with two or more sureties, within ten days after notice of his election or appointment, and

deliver to the supervisor, and filed by him in the office of the town clerk within ten days thereafter. (Laws of N. Y. of 1890, chap. 569, § 63.) See, also, as to form of undertaking given by town officer, section 66 of same chapter, cited in note 1 to form No. 1021.

No. 1030.

Notice of acceptance of resignation of town officer.

(Laws of N. Y. of 1890, chap. 569, § 64.)

To the town clerk of the town of —, in the county of —:

You are hereby notified that we, the undersigned, justices of the peace of the said town, have, for sufficient cause, shown to us, accepted the resignation of C. B. (collector, etc.) of said town.¹

Dated —, 1—.

E. F.,
G. H.,
I. J.,

Justices of the Peace
of said town.

1. See section 64 of chapter 569 of Laws of New York of 1890, as to this notice.

No. 1031.

Appointment of town officer to fill vacancy.

(Laws of N. Y. of 1890, chap. 569, § 65.)

We, the undersigned, the supervisor, town clerk and (two of the) justices of the peace of the town of —, in the county of —, constituting the town board of said town (or, name the officers making the appointment, and say, constituting a majority of the town board of said town), do hereby appoint M. R., of said town, as (constable), in and for the town of —, to fill the vacancy in that office occasioned by the resignation (or, death, etc.) of F. M.; said M. R. is to hold his said office until the next annual town

meeting of said town, and until his successor is elected or appointed in his place and has qualified.

In witness whereof, we have hereunto set our hands and seals at —, in said town, on the — day of —, 1—. ¹

B. F., [L. S.]

Supervisor.

(Add other signatures of
board and official descriptions and seals.)

1. See section 65 of chapter 569 of Laws of New York of 1890, as to appointments to fill vacancies in town offices, and the times for which such appointees are to hold their offices. The board making the appointment shall cause the same to be forthwith filed in the office of the town clerk,

who shall forthwith give notice to the person appointed. A copy of the appointment of a justice of the peace shall also be filed in the office of the county clerk, before the person appointed shall be authorized to act. (See same section.)

See, also, amendment to said section 65 by chapter 481 of Laws of 1897.

No. 1032.

Notice to town officer, appointed by town board to fill a vacancy, of his appointment.

(Laws of N. Y. of 1890, chap. 569, § 65.)

To M. R.:

You are hereby notified of your appointment by the town board of the town of —, as (constable) in and for the town of —, to fill the vacancy in that office occasioned by the resignation (or, death, etc.) of F. M., by an instrument under the hands and seals of said board (or, of a majority of said board), dated —, 1—, and filed in my office on the — day of —, 1—, such office to be held by you until the next annual town meeting of said town, and until your successor is elected or appointed in your place and has qualified. ¹

Dated —, 1—

Yours, etc.,

M. N.,

Town Clerk of the town of —.

1. See section 65 of chapter 569 of Laws of New York of 1890, as to this notice. The party appointed has ten days after the service of this notice to take and subscribe the constitutional oath of office (form No.

1019), and such other oath as may be required by law. This oath must be filed within eight days in the town clerk's office, which shall be deemed an acceptance of the office, and a neglect or omission to take and file such oath, or a neglect to execute and file, within the time required by law, any official bond or undertaking, shall be deemed a refusal to serve, and the office may be filled as in case of vacancy. (Same chapter, § 51.) For form of official oath, see form No. 1019, and for undertaking, see form No. 1022. The above provisions do not, however, apply to justices of the peace, as to whose oath and undertaking see section 58 of same chapter.

See, also, amendment to section 65 of town law by chapter 481 of Laws of 1897.

TITLE III.

FORMS RELATING TO GENERAL DUTIES OF TOWN OFFICERS.

(Laws of N. Y. of 1890, chap. 569, art. 4.)

No. 1033. Notice to inhabitants of town to assist in extinguishing fire in the woods.

1034. Notice of qualifying of constable by town clerk to county clerk.

1035. Oath to be administered to town clerk, etc., going out of office, by his successor, on delivery of records, etc.

1036. Same to executor, etc., of town clerk.

No. 1033.

Notice to inhabitants of town to assist in extinguishing fire in the woods.

(Laws of N. Y. of 1890, chap. 569, § 52.)

To A. B., etc., inhabitants of the town of —, in the county of —:

You are hereby notified of a fire in the woods, at (describing place) in said town, and you and each of you are hereby required and ordered, pursuant to statute, to repair to the said place where said fire is prevailing, and there to assist in extinguishing the same, or in stopping its progress.¹

Dated —, 1—.

Yours, etc.,

M. F.,

(Justice of the Peace) of the town of —.

1. See section 82 of chapter 569 of Laws of New York of 1890, as to this notice.

No. 1034.

Notice of qualifying of constable by town clerk to county clerk.

(Laws of N. Y. of 1890, chap. 569, § 83.)

To A. C. R., Esq., county clerk of — county :

I hereby certify and return, pursuant to law, that M. R., who was duly elected a constable in and for the town of —, in said county, at the annual town meeting of said town, held at the town hall of said town on the — day of —, 1— (or, who was duly appointed on the — day of —, 1—, by the town board of said town, a constable, in and for the town of —, in said county), has duly qualified as such constable, on the — day of —, 1—. ¹

Dated —, 1—

F. P.,

Town Clerk of the town of —.

1. See section 83 of chapter 569 of Laws of New York of 1890, as to this certificate, and see section 65 of same chapter as to appointments of town officers to fill vacancies by town board.

By the same section any town clerk willfully omitting to make above return to the county clerk, forfeits the sum of ten dollars, to be recovered by the supervisor in the name of, and for the use of, the town.

No. 1035.

Oath to be administered to town clerk, etc., going out of office, by his successor, on delivery of records, etc.

(Laws of N. Y. of 1890, chap. 569, § 84.)

COUNTY OF —, } ss.:
Town of —, }

I, M. N., of —, do hereby solemnly swear and make oath, pursuant to statute, that the record books and papers herewith delivered, upon his demand, to I. H., my successor in office as (town clerk) of the said town of —, are all the record books and papers in my possession, or under my control, belonging to the said office of (town clerk) of said town, and that the amount paid by me at the time of such delivery

to said I. H., to wit, the sum of — dollars, is all the money belonging to said town remaining in my hands.¹

(Jurat, as in form No. 32.)

M. N.

1. See section 84 of chapter 569 of livery by them, to his successor in Laws of New York of 1890, as to office, of such records, etc. this oath, and see next form, No. 1036, See, also, Matter of Baker (11 for form of oath of executors, etc., of How. Pr. 418); Victory v. Blood (25 deceased town clerk, etc., upon de- Hun, 516).

No. 1036.

Oath to be administered to executor or administrator of town clerk, etc., by his successor in office, on delivery of records, etc.

(Laws of N. Y. of 1890, chap. 569, § 84.)

COUNTY OF —, }
Town of —, } ss..

I (or, we), L. M., of — (and, O. P., of —), do (severally) solemnly swear and make oath, pursuant to statute, that I am (or, that we are) the executor (or, executors) of the will [or, administrator, or, administrators of the estate] of M. N., late of —, deceased, who was at the time of his death the (town clerk) of the said town of —; that the records, books and papers herewith delivered to I. H., the successor of said M. N. in the office of (town clerk) of the said town of —, are all the records, books and papers in the possession or under the control of deponent (or, deponents) belonging to the office of (town clerk) of said town, and which were in the possession of said M. N. at the time of his death, belonging to said office.¹

(Jurat, as in form No. 32.)

L. M.

O. P.

1. See section 84 of chapter 569 of to in note to last form, as to this Laws of New York of 1890, referred oath.

TITLE IV.

FORMS RELATING TO DIVISION FENCES.

(Laws of N. Y. of 1890, chap. 569, art. 5.)

- No. 1037. Location of division fence between lands bounded by a line between banks of streams not navigable.
1038. Notice by owner of lands to adjoining owner that he desires to have them lie open.
1039. Notice by owner of lands to adjoining owner that he desires to have his lands lying open inclosed.
1040. Decision of fence viewers upon subdivision or new apportionment of division fence, by reason of transfer of title.
1041. Certificate of fence viewers in case of disagreement between adjoining owners as to division fence.
1042. Appraisal by fence viewers of damages for neglect to make or keep in repair division fence.
1043. Request of adjoining property owner to make or repair division fence.
1044. Request of adjoining owner to put in repair division fence injured or destroyed by floods or other casualty.

No. 1037.

Location of division fence between lands bounded by a line between banks of streams not navigable.

(Laws of N. Y. of 1890, chap. 569, § 100, as amended 1892, by chap. 92.)

— COUNTY, }
 Town of —, } ss.:

Whereas, A. B. and C. D. are the owners of adjoining lands, situated in said town, and bounded by the center line of (the name of stream), which stream is not navigable. And whereas, the said B. and D. cannot agree upon the manner in which the division fence between them shall be maintained:

And we, the undersigned (two of) the fence viewers of said town, having made due inquiry into the facts and circumstances, and examined the premises, after due notice to the parties interested, do find and direct, pursuant to statute, that the division fence between the lands of said B. and D. shall be located on the — bank of said stream, and shall

be located as follows, viz.: (describing location), and that the portion of said division fence which shall be kept and maintained respectively by said A. and B., shall be (each the one-half part) thereof, and that the said A. B. and C. D. shall contribute in that proportion to the cost of the construction and maintenance thereof. Our fees herein amount to — dollars.

Witness our hands, this — day of —, in the year 1——.¹

E. F.,

G. H.,

Fence Viewers.

1. By section 23 of chapter 569 of Laws of New York of 1890, the assessors and commissioners of highways elected in every town shall, by virtue of their offices, be fence viewers of their town. By section 103 of same chapter, if disputes arise between the owners of adjoining lands concerning the liability of either party to make or maintain any division fence, or the proportion or particular part of the fence to be made or maintained by either of them, such dispute shall be settled by any two of the fence viewers of the town, one of whom shall be chosen by each party; and if either neglect, after eight days' notice, to make such choice, the other party may select both. The fence viewers, in all matters heard by them, shall see that all interested parties have had reasonable notice thereof, and shall examine the premises and hear the allegations of the parties. If they cannot agree they shall select another fence viewer to act with them, and the decision of any two shall be reduced to writing, and contain a description of the fence and the proportion to be maintained by

each, and shall be forthwith filed in the office of the town clerk, and shall be final upon the parties to such dispute and all parties holding under them.

See, also, as to powers of fence viewers and their fees, etc., in matters of division fences, section 104 of same chapter, and see section 100 of same chapter as to the above form; and see, generally, as to division fences, *Terry v. N. Y. Cent. R. R. Co.* (22 Barb. 579); *Ferris v. Van Buskirk* (18 id. 397); *Adams v. Van Alstyne* (25 N. Y. 232, aff'g S. C., 35 id. 9); *Chrysler v. Westfall* (41 id. 159); *Perkins v. Perkins* (44 id. 136); *Ryan v. Rochester and Syracuse R. R. Co.* (9 How. Pr. 453); *Bronk v. Decker* (17 Wend. 320); *Rovey v. Aldrich* (44 Hun. 320); *Crandall v. Eldridge* (46 id. 411); *People, ex rel. Foote, v. Dewey* (3 T. & C. 638).

It is not one-half in length of a division fence which the statute requires each owner of adjoining lands to build, but a just and equal proportion with reference to the cost of construction and maintenance. (*People, ex rel. Foote, v. Dewey, supra.*)

By chapter 481 of Laws of 1897, said section 23 of the town law was renumbered as section 21.

See, also, chapter 310 of Laws of 1891, and duties of fence viewers thereunder.

No. 1038.

Notice by owner of lands to adjoining owner that he desires to have them lie open.

(Laws of N. Y. of 1890, chap. 569, § 101.)

To E. D.:

You are hereby notified, pursuant to statute, that I (*) choose to let the lands owned (and occupied) by me, in the town of —, in the county of — adjoining your lands, lie open and unfenced.¹

Dated —, 1—.

Yours, etc.,

A. B.

1. See section 101 of chapter 569 this notice, and its effects. See, also of Laws of New York of 1890, as to note 1 to last form, No. 1037.

No. 1039.

Notice by owner of lands to adjoining owner that he desires to have his lands lying open, inclosed.

(Laws of N. Y. of 1890, chap. 569, § 101.)

As in form No. 1038, to (*), and from thence as follows: Intend to have the lands owned (and occupied) by me, in the town of —, in the county of —, adjoining your lands, and now lying open, inclosed, and that I will refund to you a just proportion of the value of the division fence made and maintained by you between said lots¹ (or, will build and maintain my proportion of a division fence between said lots).²

Dated —, 1—.

Yours, etc.,

A. B.

1. See section 101 of chapter 569 maintained, insert this clause in of Laws of New York of 1890, as to brackets in place of the previous one. this notice, and see note to last form (See same section.) See, also, note and note therein referred to. 1 to form No. 1037.

2. If no fence has been made and

No. 1040.

Decision of fence viewers upon subdivision or new apportionment of division fence, by reason of transfer of title.

(Laws of N. Y. of 1890, chap. 569, § 102.)

COUNTY OF —, }
 Town of —, } ss.:

Whereas, A. B. and C. B. have become owners of adjoining lots, situated in said town of —, by reason of the transfer of title to them, respectively, of said lots, by M. N. and O. F. (or, recite other facts). And whereas, the said owners have disagreed as to the value of the division fence between said lots, and the proportion thereof to be paid by the said A. B. (or, as to the proportion of the division fence between their said lots, to be built and kept in repair by them, respectively):

Now, therefore, we, the subscribers, two of the fence viewers of said town, do hereby certify, that upon the application of said owners, we have examined the premises, and have heard their allegations, after due notice to them, and that due deliberation having been had thereon, we find and determine that the value of the division fence between the said lots is the sum of — dollars, and that the proportion thereof to be paid by said A. B. is the sum of — dollars [or, that the (one-half) part of said fence, at the — end thereof, is the proportion thereof to be built and kept in repair by said A. B., and that the remainder of said fence is the proportion thereof to be built and kept in repair by said C. B.). Said fence is described as follows, to wit: (describe same).

And we further certify that our fees for said services herein amount to the sum of — dollars.

In witness, etc. (as in form No. 1041).¹

I. H.,
 J. M.,
 Fence Viewers.

1. See section 102 of chapter 569 to division fences, note 1 to form of Laws of New York of 1890, as to No. 1037. this certificate, and see generally as

No. 1041.

Certificate of fence viewers in case of disagreement between adjoining owners as to division fence.

(Laws of N. Y. of 1890, chap. 569, § 103.)

COUNTY OF —, }
 Town of —, } ss.:

Whereas, A. F. and C. B., being owners of adjoining lands situated in said town, and having disagreed as to the portions of a division fence to be made (or, kept in repair) by them respectively between said lands:

Now, therefore, we, the subscribers, two of the fence viewers of said town, do hereby certify that upon the application of said owners we have examined the premises and have heard their allegations, after due notice to them, and that due deliberation having been had thereon, we do determine that said division fence be built as follows, viz.: (describe same), and that the (one-half) part of said fence, at the — end thereof, is the proper proportion thereof to be built (or, to be put and kept in repair) by the said A. F., and that the remainder of said fence is the proper proportion thereof to be built (or, to be put and kept in repair) by the said C. B.

And we further certify that our fees for said services herein amount to the sum of — dollars.

In witness whereof, we have hereunto set our hands this — day of —, 1—. ¹

I. H.,

J. M.,

Fence Viewers.

1. See section 103 of chapter 569 of Laws of New York of 1890, cited in note 1 to form No. 1037, as to this certificate, and see, also, that note, generally, as to powers and duties and fees of fence viewers, and as to division fences.

No. 1042.

Appraisal by fence viewers of damages for neglect to make or keep in repair division fences.

(Laws of N. Y. of 1890, chap. 569, §§ 105, 108.)

COUNTY OF —, }
 Town of —, } ss.:

F. P., the owner of lands situated in said town, having made application to the undersigned, two of the fence viewers of said town, to ascertain and appraise the damages arising in consequence of the refusal (or, neglect) of M. E., the owner of land in said town adjoining the land of said F. P., to make and maintain his proportion of a division fence between the aforesaid lands (or, to keep in repair; or, in permitting his proportion of, etc., to be out of repair), we have examined the premises, and after inquiry and examination made by us, after due notice to said M. E., we do hereby decide and determine that the said F. P. has sustained damage to his land, crops, fruit trees and shrubbery in consequence of the refusal (or, neglect) of the said M. E. to make and maintain (or, to keep in repair; or, in permitting to be out of repair) his proportion of the said division fence) as aforesaid, which said damages we have ascertained and appraised at the sum of — dollars.

And we further certify that our fees for our services herein amount to — dollars.

In witness, etc. (as in form No. 1041).¹

A. R.,
 C. F.,
 Fence Viewers.

1. See sections 105 and 108 of chapter 569 of Laws of New York of 1890, as to this appraisal, and see note 1 to form No. 1037.

If such neglect or refusal shall be continued for the period of one month after request in writing to make or repair the fence, the party injured

may make or repair the same at the expense of the party so neglecting or refusing, to be recovered from him with costs. See next form for form of request.

By section 108, id., the appraisal shall only be *prima facie* evidence of the amount of such damages.

No. 1043.

Request of adjoining property owner to make or repair division fence.

(Laws of N. Y. of 1890, chap. 569, § 105.)

To M. E.:

You are hereby notified and requested, pursuant to statute, to make (or, to put in repair) your proportion of the division fence between the land of the undersigned and your adjoining land in the town of —, in the county of —, within one month after the service upon you of this notice, or in case of your failure so to do, the undersigned will make (or, repair) the same, at your expense.¹

Dated —, 1—.

Yours, etc.,

F. P.

1. See last clause of section 105 of 1890, cited in note 1 to last form, No. chapter 569 of Laws of New York of 1042, as to this notice.

No. 1044.

Request, by adjoining owner, to put in repair division fence injured or destroyed by floods or other casualty.

(Laws of N. Y. of 1890, chap. 569, § 106.)

To M. E.:

You are hereby notified and required, pursuant to law, to make (or, repair), within ten days after the service of this notice upon you (your just proportion of) the division fence between the lands of the undersigned and your adjoining lands, in the town of —, in the county of —, which fence has been destroyed (or, injured) by a flood (or, name other casualty), and that in case of your refusal (or, neglect) so to do, I, the undersigned, will make and repair the same at your expense.¹

Dated —, 1—.

Yours, etc.,

F. P.

1. See section 106 of chapter 569 of Laws of New York of 1890, as to this notice and requisition.

TITLE V.

FORMS RELATING TO STRAYS AND CHATTELS DOING DAMAGE, FLOATING
TIMBERS AND WRECKS.

(Laws of N. Y. of 1890, chap. 569, art. 6.)

- No. 1045. Notice to town clerk of lien upon beasts found upon land doing damage.
1046. Notice to owners of beasts taken doing damage that they are upon his land or in pound.
1047. Certificate of fence viewers as to charges, etc., due to owner for animals taken doing damage.
1048. Notice of sale of property by fence viewers in foreclosure of lien.
1049. Petition to County or City Court by sheriff, etc., for leave to sell perishable wrecked property.
1050. Order of County or City Court, directing sale of wrecked property.
1051. Petition by owner or consignee, etc., of wrecked property claiming same or proceeds thereof.
1052. Order of County Court directing delivery of wrecked property or payment of proceeds of same.
1053. Undertaking to be given by claimant of wrecked property upon application therefor or for the proceeds thereof.
1054. Statement of claim for salvage and expenses on wrecked property or its proceeds.
1055. Petition to County Court for adjustment by appraisers of salvage and expenses on wrecked property.
1056. Order of County Court upon petition form No. 1055, appointing such appraisers.
1057. Oath of such appraisers.
1058. Decision of such appraisers.
1059. Notice of sale of wrecked property by sheriff, etc.
1060. Notice by sheriff of wrecked property which has come into his possession.

No. 1045.

Notice to town clerk of lien upon beasts found upon land doing damage.

(Laws of N. Y. of 1890, chap. 569, § 121.)

To the town clerk of the town of —, in the county of —:

You are hereby notified, pursuant to statute, that I, the undersigned, a resident of (the said town), have taken and have now in my possession, certain horses, etc., viz.: (de-

scribing them), which were found more than five days since, upon (inclosed) land situated (in part) in the said town of —, owned (or, occupied) by me, doing damage (or, having strayed thereupon), which have not come upon said land from adjoining lands, where they were lawfully kept, by reason of my refusal or neglect to make or maintain a division fence required of me by law, and that I claim a lien upon said horses, etc., for the damage sustained by me by reason of their so coming upon my said lands and doing damage, for my reasonable charges for keeping them, and all fees and costs made thereon.¹

Dated —, 1—.

M. F.

1. See sections 120 and 121 of chapter 569 of Laws of New York of 1890, as to this notice, which is required to be recorded by the town clerk in a book to be kept by him for that purpose, for which he shall receive ten cents for each beast, to be paid by the person delivering the notice. Such book shall always be kept open for inspection, and no fees shall be taken by the clerk therefor.

See, also, section 122 of same chapter, as to impounding beasts after six days.

By section 135 of same chapter it is provided that when any person shall be authorized to distrain inanimate goods or chattels doing damage, or whenever any logs, timbers, boards or planks, in rafts or otherwise, or other personal property shall have drifted upon his land, he shall be entitled to the same remedies, and

shall proceed therein in the same manner and with the same powers as therein provided with respect to beasts found doing damage, so far as such provisions are applicable. He may at any time deliver his notice of lien to the town clerk, describing the property, and he shall keep the same in some convenient place without removal to a pound, until the property is sold or reclaimed. The same officers shall conduct proceedings therein as in proceedings where beasts are found doing damage, and all proceeds of sale shall be, in like manner, paid over and applied, subject to the same penalties and liabilities and with the same force and effect.

Under these provisions the above form and forms Nos. 1046, etc., may be used in such proceedings, with suitable changes adapting them to the circumstances.

No. 1046.

Notice to owner of beasts taken doing damage that they are upon his lands or in pound.

(Laws of N. Y. of 1890, chap. 569, § 123.)

To A. B.:

You are hereby notified, pursuant to statute, that certain horses, etc., owned by you, to wit: (describing them) have

come and been found within thirty days (doing damage) upon (inclosed) lands owned (or, occupied) by me, situated (in part) in the town of —, in the county of —, and that said beasts are now upon my said lands (or, in pound), and are held by me as strays (or, beasts doing damage).¹

Dated —, 1—.

Yours, etc.,

M. F.

1. See section 123 of chapter 569 of Laws of New York of 1890, as to this notice, which is to be served, either personally or by mail, upon the owner of the lands within thirty days after the beasts may have come or been found upon the lands, upon the owner of the beasts, if known, and if not known, by publication within such time, in the nearest newspaper of the county, for at least two successive weeks.

See, also, section 135 of same chapter, cited in note 1 to last form, No. 1045, as to proceedings in cases of logs, etc., drifted upon land.

No. 1047.

Certificate of fence viewers as to charges, etc., due to owner for animals taken doing damage.

(Laws of N. Y. of 1890, chap. 569, § 124.)

We, the undersigned, two of the fence viewers of the town of —, in the county of —, do hereby determine and certify as follows, viz.:

That certain of the horses, etc., belonging to M. N., of said town, having been found upon the (inclosed) lands in said town of A. B., a resident of said town, doing damage (or, they having strayed upon his said inclosed land), and having been taken by said A. B., and due proceedings having been thereupon had, according to law, and the charges, damages, costs and fees in such proceedings not having been agreed upon between said A. B. and said M. F., and the amount thereof having been submitted to the undersigned for their determination thereupon, and we having examined the premises upon due notice to the parties, and heard their allegations:

Now, therefore, we do hereby find and determine that the said charges, damages, costs and fees amount to the sum of — dollars.

And we further certify that our fees for our services herein amount to the sum of — dollars.

Witness our hands this — day of —, 1—. ¹

P. R.

O. G.

1. See section 124 of chapter 569 of Laws of New York of 1890, as to this certificate; and as to fees of fence viewers, see section 125, id., and see note 1 to form No. 1045. As to proceedings in case of logs, etc., drifted upon lands, see section 135 of same chapter, cited in note 1 to form No. 1045.

No. 1048.

Notice of sale of property by fence viewers in foreclosure of lien.

(Laws of N. Y. of 1890, chap. 569, § 127.)

Whereas, a notice of lien has been duly delivered by A. B., of the town of —, in the county of —, the owner of land situated in the said town, to the town clerk of said town, on the — day of —, 1—, upon the animals of M. N., described as follows, to wit: (describe same), which animals were taken by said A. B., doing damage upon his said lands (or, having strayed upon his inclosed land). And whereas, the said M. N. has not redeemed the said animals, although more than three months have expired since the delivery of said notice to said clerk, now upon the application of the said A. B. to the undersigned, a fence viewer of said town:

Notice is hereby given, pursuant to law, that the said beasts will be sold by me at public auction, at (name place of sale), in the said town of —, on the — day of —, 1—, at — o'clock in the — noon, to the highest bidder, unless redeemed by the owner.¹

Dated —, 1—.

F. R.,

Fence Viewer.

1. See section 127 of chapter 569 of Laws of New York of 1890, as to this notice, which must be given at least ten days previous to the sale, by advertisement posted up in five public places in the town where such beasts may have been kept, one of which shall be at or near the outside door of the town clerk's office. See, also, section 128 of same chapter as to disposition of proceeds of sale.

| | |
|--|--|
| <p>As to notice to owner of meetings of fence viewers, etc., see section 129, id.; as to duties of fence viewers in this proceeding, see section 130, id.; as to application by owner for surplus moneys, see section 133, id.</p> | <p>As to proceedings in case of logs, etc., drifted upon lands, see section 135 of same chapter, cited in note 1 to form No. 1045.</p> |
|--|--|

No. 1049.

Petition to County or City Court by sheriff, etc., for leave to sell perishable wrecked property.

(Laws of N. Y. of 1890, chap. 569, § 139.)

To the County Court of the county of — (or, the City Court of the city of —):

The petition of A. B., of —, respectfully shows: That he is the sheriff of the county of — (or, name other officer): that as such sheriff he took into his possession, on or about the — day of —, 1—, in the name of the people of the State, certain wrecked property, to wit: (describing same), found in the town of —, in said county of —, of which no owner or person entitled to the possession has appeared; that he has caused the value of said wrecked property to be appraised by disinterested persons, pursuant to statute, and has the same in a safe place to answer the claims of the persons entitled thereto, and has published the notice required by statute to be published in such cases, for the time required by statute; that said property so saved is perishable property, so as to render the sale thereof expedient; that the expenses of the care, preservation and keeping of said property amount to the sum of — dollars, and the reasonable charges for salvage thereon amount to the sum of —;¹ that no previous application has been made for the relief asked for by this petition.²

Your petitioner prays that an order may be made by this court, authorizing such sale, at public auction, at the time and in the manner to be specified in said order, and that the proceeds of such sale, after deducting the expenses allowed

by the court, may be paid to the county treasurer of said county of ____.³

Dated ____, 1____.

A. B.

(Verification, substantially as in form No. 323.)

1. See sections 145, 146 and 147 as to allowance and appraisal of amount of expense and salvage upon wrecked property.

2. See Rule 25 of General Rules of Practice.

3. See section 139 of chapter 569 of Laws of New York of 1890, as to this application.

No. 1050.

Order of County or City Court directing sale of wrecked property.

(Laws of N. Y. of 1890, chap. 569, § 139.)

At a term of the (County) Court of the county of ____, held at ____, on the ____ day of ____, 1____.

Present — Hon. J. C., County Judge.

On reading and filing the petition of A. B., of ____, dated ____, 1____, by which it appears that said A. B. is the (sheriff of the county of ____), and as such sheriff has taken into his possession and custody, in the name of the people of the State, certain wrecked property, to wit (describing same), and the court being satisfied that a sale of the property would be most beneficial to the parties interested, it is hereby ordered, on motion of E. M., counsel for said petitioner, that the said sheriff of ____ county, the officer having custody of the said property, be and he is hereby authorized and directed to sell the said property at public auction, in the said county, after giving public notice of such sale as required by law, and by section 148 of chapter 569 of Laws of New York of 1890, known as the town law, which sale shall be made on the ____ day of ____, 1____, at ____ o'clock in the ____ noon (here give any further necessary directions as to the manner of sale).¹

And it is further ordered, that the proceeds of such sale, after deducting expenses, which are hereby allowed at the sum of — dollars, shall be paid by said sheriff to the county treasurer of said county of —.²

1. By section 149 of chapter 569 of Laws of New York of 1890, it is provided that public notice of every sale to be made of wrecked property under the provisions of article sixth of that chapter, shall be published by the officer making the sale, for at least two weeks in succession, in one or more of the newspapers published in the county where the property shall have been saved. Every such notice is required to state the time and place of the sale, and to

contain a particular description of the property intended to be sold.

See as to publication where it is required to be made for a certain number of weeks and months, *Anon-ymous* (Col. & Caine's Cas. 428); *Betts v. City of Williamsburgh* (15 Barb. 255, 260); *Matter of Excelsior Fire Ins. Co.* (16 Abb. Pr. 8); *Wood v. Knapp* (100 N. Y. 109, 113.)

2. See section 139 of chapter 569 of Laws of New York of 1890 as to this order and its contents.

No. 1051.

Petition by owner or consignee, etc., of wrecked property claiming same or proceeds thereof.

(Laws of N. Y. of 1890, chap. 569, § 140.)

To the County Court of the county of — (or, the City Court of the city of —):

The petition of R. F. respectfully shows: That he resides at —, in the county of — and State of —; that he is the (agent of F. C., the) owner (or, consignee) (of the cargo) of the (naming vessel), which said (vessel) was wrecked at (stating place), in said county, on or about the — day of —, 1—; that said wrecked (vessel) (or, the cargo of said wrecked vessel) was found and saved and taken possession of by the (sheriff of said county), on or about the — day of —, 1—, and less than one year since [and an order having been made by this court, on the — day of —, 1—, for the sale of the same, it being perishable property, the same was sold by said (sheriff) pursuant to law, and the proceeds thereof paid to the treasurer of the said county of —]; that no previous application has been made by your petitioner for the relief hereby asked for.¹

And your petitioner prays that said sheriff (or, said county treasurer) may be directed to deliver (or, pay) to him (as the agent for said F. C.) the said wrecked property (or, the proceeds of said wrecked property), he having established his claim thereto, upon the payment by him of a reasonable salvage, and all necessary expenses incurred in the preservation and keeping thereof, and that your petitioner may have such further or other relief as may be just and proper in the premises.²

Dated —, 1—.

R. F.

(Verification, as in form No. 323.)

1. See Rule 25 of General Rules of this application, and see *Baker v. Practice.* Hoag (7 N. Y. 555, overruling 3

2. See section 140 of chapter 569 Barb. 203; S. C., 7 id. 113).
of Laws of New York of 1890, as to

No. 1052.

Order of County Court directing delivery of wrecked property or payment of proceeds of same.

(Laws of N. Y. of 1890, chap. 569, § 140.)

At a term of the County Court of — county, held at the (city) of —, in said county, on the — day of —, 1—.

Present — Hon. J. C. —, county judge.

| | |
|---|---|
| In the Matter of the Petition | } |
| of R. F. for delivery (or, | |
| payment of the proceeds) | |
| of wrecked property to him | |
| as (agent of F. C.) the owner, etc., thereof. | |

On reading and filing the petition of R. F., dated —, 1—, by which it appears that said R. F. is the owner, etc. (or, the agent of F. C., the owner, etc.) of the (cargo) of the

(naming vessel), which said vessel was wrecked at (stating place), in the county of — (and that an order was made for the sale of the same, it being perishable property, and the proceeds thereof paid to the county treasurer of — county), and said claim having been established by evidence and an undertaking having been given and filed by said claimant pursuant to statute:

Now, on motion of E. M., of counsel for said E. F., it is hereby ordered, that I. P., the sheriff of the county of — (or, F. G., county treasurer of the county of —), deliver to said E. F., as such owner, etc. (or, the agent for such owner) the said property (or, the said proceeds of said property), upon payment by him of a reasonable salvage, and all necessary expenses incurred in the preservation of the proceeds of said property.¹

1. See section 140 of chapter 569 of the Laws of New York of 1890, as to this order.

No. 1053.

**Undertaking to be given by claimant of wrecked property,
upon application therefor or for the proceeds thereof.**

(Laws of N. Y. of 1890, chap. 569, § 141.)

Whereas, R. F. (as agent for F. C.), the owner (or, consignee) of certain wrecked property, to wit: (describing same) in the possession of the (sheriff of — county) [or, of the proceeds of certain wrecked property, to wit: (describing property) in the possession of the county treasurer of — county], is about to make an application to the County Court of the county of — (or, name other court), for an order directing said property to be delivered by said (sheriff), (or, said proceeds to be paid by said treasurer) to him (as the agent of said F. C.):

Now, therefore, we, said R. F., of —, and I. L., of — do hereby undertake, pursuant to statute, in the sum of —, that said R. F. will pay all damages recovered against him

or his representatives, within two years after the date hereof, by any person establishing his title as owner of such property (or, proceeds).¹

Dated —, 1—.

R. F.

I. L.

(Acknowledgment, justification, etc., as in form No. 220.)

(Approval by the court, substantially as in form No. 302.)

1. See section 141 of chapter 569 of the property or proceeds. The of Laws of New York of 1890, as to undertaking is to be filed in the this undertaking, and see section 142, clerk's office of the county in which id., as to suit by claimant for recovery it shall be taken.

No. 1054.

Statement of claims for salvage and expenses on wrecked property or its proceeds.

(Laws of N. Y. of 1890, chap. 569, § 143.)

(Title of proceeding, as in form No. 1052.)

The following is a statement of the salvage and expenses on the (cargo of the) wreck of the (naming and describing vessel), made pursuant to statute in the above entitled matter.

(Here state in detail the items of these charges.)¹

Dated —, 1—.

(Signature of officer.)

Sheriff (or, County Treasurer) of the county of —.

1. See section 143 of chapter 569 of Laws of New York of 1890, as to vage claimed in any case shall not this statement, and as to adjustment exceed one-half of the value of the of amount of expenses and salvage. property or proceeds, and every agreement, order or adjustment al- By section 145 of same act, the sal- lowing a greater salvage shall be void.

No. 1055.

Petition to County Court for adjustment of salvage and expenses on wrecked property

(Laws of N. Y. of 1890, chap. 569, § 146.)

To the County Court of the county of — (or, the City Court of the city of —, in the county of —):

The petition of M. N. respectfully shows: (*) That he is the owner (or, consignee) of the (cargo of) the (name and de-

scription of vessel) (or, that he was the master or supercargo of the, etc., at the time the same was wrecked),¹ which (vessel) was wrecked at (state place), in the county of —, on or about the — day of —, 1— : (†) That (the cargo of) said wrecked vessel was taken into the possession of the (sheriff) of the county of —, on or about the — day of —, 1— [and said vessel (or, said cargo) was sold by said (sheriff) under an order of this court, dated —, 1—, and the proceeds thereof paid to the county treasurer of said county on the — day of —, 1—], and that (the proceeds of) said (vessel) (or, said cargo) is (or, are) now in the hands of such (sheriff) (or, of said county treasurer); that the amount of the salvage and expenses on said saved property cannot be adjusted by agreement of the parties; that no application has been made for the relief asked for by this petition (or, state application made and its result).²

And your petitioner prays that this court will appoint suitable persons as appraisers of the said property, pursuant to statute, to adjust the amount of such salvage and expenses.³

Dated —, 1—.

M. N.

(Verification, as in form No. 323.)

[If the application is made by a claimant having an order for its delivery or payment, proceed as above to (*), and from thence as follows: that he is the claimant under an order of the (County Court) of, etc., dated, etc., a copy of which order is hereto annexed, and has exhibited said order to the said (sheriff), who has presented to your petitioner a written statement of his claims for salvage on said property (or, the proceeds of said property), but that your petitioner refused to allow such claims.

Then as above, from (†) to end thereof.

Dated, etc.

(Signature as above.)

(Verification, as above.)

(Annex copy order.)]

1. See Rule 25 of General Rules of Practice. this application. For form of order upon this petition, see next form, No. 1056.

2. See section 145 of chapter 569 of Laws of New York of 1890, as to

No. 1056.

Order of County Court upon petition, last form, No. 1055, appointing appraisers of wrecked property.

(Laws of N. Y. of 1890, chap. 569, § 146.)

At, etc. (as in form No. 1052).

Present — Hon. J. C., — county judge.

In the Matter of the Application of M. N. for appointment of appraisers to adjust the amount of salvage and expenses on (the proceeds of) certain saved property, to wit: (describing same).

On reading and filing the petition of M. N., dated —, 1—, praying for the appointment of appraisers pursuant to section 146 of the Laws of New York of 1890, and on motion of M. P., of counsel for said M. N., it is hereby ordered, that I. F., P. C. and J. R., three disinterested freeholders of the county of —, not inhabitants of the town of —, to adjust the amount of the salvage and expenses on the saved property (or, on the proceeds of the saved property) in the hands of the (sheriff; or, of the county treasurer) of the county of —, to wit: (the cargo of the wreck of the — (naming and describing vessel) [or, the proceeds of the wreck of the —].¹

1. See section 146 of chapter 569 of Laws of New York of 1890, as to this order.

No. 1057.

Oath of appraisers of wrecked property appointed by order, form No. 1056.

(Laws of N. Y. of 1890, chap. 569, § 146.)

(Title of proceeding, as in form No. 1056.)

— COUNTY, ss.:

I. F., P. C. and J. R., being severally duly sworn, say:
That they will faithfully and impartially perform the duties

of their trust as appraisers appointed in the above entitled proceeding, by an order of the County Court of — county, dated —, 1—.¹

(Signatures of appraisers.)

(Jurat, as in form No. 32.)

1. See section 146 of chapter 569 this oath and as to powers and duties of Laws of New York of 1890, as to of such appraisers.

No. 1058.

Decision of appraisers appointed to adjust the amount of salvage and expenses upon wrecked property.

(Laws of N. Y. of 1890, chap. 569, § 146.)

(Title of proceeding, as in last form, No. 1057.)

We, the undersigned (two of the) appraisers appointed pursuant to statute, by an order of the (County) Court of the (county) of —, made in the above entitled proceeding, dated —, 1—, and entered in — county clerk's office, do hereby find and decide as follows :

First. That having taken the oath required by law, which oath is hereto annexed, we have proceeded to ascertain and adjust the said amount, and have heard the allegations of the parties, and the testimony of the witnesses who have attended or have been produced by them.

Second. That the amount of such salvage is the sum of —, and that A. F. is entitled to receive the one — part thereof, to wit : the sum of — dollars ; that E. B. is entitled to receive the — part thereof, to wit : the sum of — dollars, etc. (stating, in like manner, the amount to be paid to each person entitled to share therein).

Third. That the amount of such expenses is the sum of — dollars, and that said E. B. is entitled to receive the — part thereof, etc. (stating the amount to be paid to each one entitled).

And we further report that our fees and expenses as such appraisers amount to the sum of — dollars, to wit : for

— days' attendance of each appraiser, at five dollars per day, and — dollars for our expenses as such appraisers.

Witness our hands at —, this — day of —, 1—.¹

(Signatures of appraisers.)

(Annex oath, last form, No. 1057.)

¹ See section 146 of chapter 569 paid by the person upon whose application they shall have been appointed, and are made a charge upon the property saved.

No. 1059.

Notice of sale of wrecked property by sheriff, etc.

(Laws of N. Y. of 1890, chap. 569, § 147.)

The wrecked property hereinafter described having been saved more than one year since, and having been taken possession of by the undersigned, the (sheriff) of the county of —, and no person having appeared to claim the same [or, the salvage and expenses thereupon not having been paid within three months after the same had been adjusted (or, after an action for the recovery of the said property had been commenced)]:

Now, therefore, notice is hereby given, pursuant to statute, that the said property will be sold at public auction, by the undersigned, at (stating place of sale), on the — day of —, 1—, at — o'clock in the — noon, and the proceeds of said sale, deducting salvage and expenses, will be paid into the treasury of this State, for the benefit of the parties interested.

The following is the description of the said wrecked property, to wit (insert description).¹

Dated —, 1—.

A. M.,
Sheriff.

¹ See section 147 of chapter 569 of Laws of New York of 1890, as to this notice.

No. 1060.

Notice by sheriff, etc., of wrecked property which has come into his possession.

(Laws of N. Y. of 1890, chap. 569, § 149.)

To all parties interested in the (name of vessel), a (description of vessel), her cargo, apparel, furniture, etc.:

Notice is hereby given, pursuant to law, that the wrecked property hereinafter described has come into the possession of the undersigned (sheriff of the county of —), on the — day of —, 1—, to wit: (describe property in the manner required by section 149, above mentioned); that said wrecked property now is at (stating place), and the actual condition thereof is (stating same); that the name of the vessel from which said property was taken (or, cast ashore) is (giving such name) (or, is unknown), and that the name of the master of said vessel is A. B. (or, is unknown), and the name of the supercargo of said vessel is C. D. (or, is unknown), and that said vessel now is at (state where), in the town of —, in said county, and that the actual condition of said vessel now is as follows, viz.: (describing same).¹

Dated —, 1—.

M. F.,
Sheriff.

1. By section 149 of chapter 569 of Laws of New York of 1890, every sheriff, coroner or wreck-master, into whose possession any wrecked property shall come, shall immediately thereafter publish a notice directed to all parties interested, for at least four weeks in succession, in one or more of the newspapers published in the county where the property shall have been saved. Every such notice is required to contain a minute description of such wrecked property, and every bale, box, cask, piece or parcel thereof, and of the marks, brands, letters and figures on each, and shall state where such wrecked

property then is, and its actual condition, and the name, if known, of the vessel from which it was taken or cast on shore, and of the master and supercargo of such vessel, and the place where such vessel then is, and its actual condition. The expense of publishing every notice required to be published relating to wrecks is to be charged on the property or proceeds to which it relates.

As to publication of notice, see note 1 to form No. 1050.

See, as to number of wreck-masters and their appointment, section 150, id.

TITLE VI.

FORMS RELATING TO THE TOWN BOARD.

(Laws of New York of 1890, chap. 569, art. 7.)

No. 1061. Form of supervisor's account.

1062. Certificate of examination of supervisor's, etc., account, to be appended thereto.
1063. Certificate of rejection of account against town by town board.
1064. Certificate of allowance of such account in whole or in part.
1065. Account of justices of the peace in criminal matters, rendered to town board.
1066. Notice of appeal to board of supervisors, from allowance of account of justice of the peace, etc., for fees in criminal proceedings.
1067. Affidavit to be annexed to account presented for audit to town board, etc.
1068. Abstract of names of persons who have presented to board of town auditors accounts to be audited, etc.
1069. Appointment by town board of town fire company, or to fill a vacancy therein.
1070. Appointment of temporary board of town auditors by town board.
1071. Appointment by supervisor to fill vacancy in board of town auditors.

No. 1061.

Form of supervisor's account.

A. F., supervisor of the town of —, in account with said town :

| 1890. | | Dr. |
|---------|--|----------|
| Feb. 2. | To am't rec'd of J. F., town collector, | \$200 00 |
| Mar. 5. | “ “ “ as penalty collected by C. D., of E. F..... | 12 50 |
| | | <hr/> |

CONTRA.

| 1890. | | Cr. |
|----------|---|---------|
| Mar. 3. | By am't paid F. L., fees as counsel in suit of C. G. agst. town..... | \$50 00 |
| Mar. 15. | By am't paid C. F., inspector of elec- tions..... | 2 75 |
| | | <hr/> |

No. 1062.

Certificate of examination of supervisors', etc., account, to be appended thereto.

(Laws of N. Y. of 1890, chap. 569, § 161.)

We, the undersigned, composing the town board of the town of —, in the county of —, do hereby certify, pursuant to statute, that we have examined the foregoing (or, annexed) account of A. F. (supervisor) of said town, and that we find the same, in all respects, correct, and that the balance now in the hands of the said supervisor, belonging to said town, as appears from said account, is the sum of — dollars.¹

Dated —, 1—.

A. B.,

C. D.,

E. F.,

Justices of the Peace.

L. M.,

Town Clerk of said town.

(Annex statement of account.)

1. See section 161 of chapter 569 of Laws of New York of 1890, as to this certificate, which is to be filed with the statement with the town clerk of the town, and to be produced by him at the next annual town meeting, and publicly read, if requested by any elector.

No. 1063.

Certificate of rejection of account against town by town board.

(Laws of N. Y. of 1890, chap. 569, § 162.)

We, the undersigned (a majority of) the officers composing the town board of the town of —, in the county of —, do hereby certify, pursuant to statute, that the annexed account of C. B. against the said town has been presented to said board, and (*) has been wholly rejected by

said board, at the second meeting thereof, held at —, on the — day of —, 1—. ¹

In witness, etc. (as in form No. 1031, omitting words "and seals").

F. G.,
Supervisor.

M. N.,
Town Clerk.

W. P.,

O. R.,

Justices of the Peace.

1. See section 162 of chapter 569 of town clerk's office. See, also, amendment of section 162 of the town law by Laws of New York of 1890, as to this certificate; which is to be filed in the chapter 481 of Laws of N. Y. of 1897.

No. 1064.

Certificate of allowance of account against towns in whole or in part.

(Laws of N. Y. of 1890, chap. 569, § 162.)

As in form No. 1063, to (*), and from thence as follows: has been wholly allowed (or, that the following items (and parts of items) thereof have been allowed, viz.: (stating them) by said board, and that the remaining items (and parts of items) thereof have been wholly rejected at the second meeting thereof, held at —, on the — day of —, 1—. ¹

In witness whereof, etc. (as in form No. 1063.)

(Signatures, etc., as in form No. 1031.)

1. See section 162 of chapter 569 of Laws of New York of 1890, as to this certificate and filing thereof, and see note to form No. 1063.

No. 1065.

Account of justice of the peace in criminal matters, rendered to town board.

(Laws of N. Y. of 1890, chap. 569, § 164.)

I, M. F., a justice of the peace of the town of —, in the county of —, do hereby render the annexed account,

marked Schedule A, to the town board of said town, pursuant to statute, in criminal proceedings, during the year 1——.¹

Dated —, 1——.

M. F.

SCHEDULE A.

| Name and residence of complainant. | Offense charged. | Action of justice upon complaint. | Constable, etc., to whom warrant was delivered. | Whether person was arrested or not. | Whether examination was waived or had. | Witnesses sworn. |
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1. See section 164 of chapter 569 of Laws of New York of 1890, as to this account.

No. 1066.

Notice of appeal to board of supervisors from allowance of account of justice of the peace, etc., for fees in criminal proceedings.

(Laws of N. Y. of 1890, chap. 569, § 163.)

To the town clerk and board of supervisors of the county of —:

Take notice that the undersigned, a (*) tax payer of the town of —, in said county, hereby appeals to the said board of supervisors from the auditing and allowance, by the town board of said town, at their second meeting, held at —, on the — day of —, 1——, of the account of M. F., a (justice of the peace) of said town, for fees in criminal proceedings, the certificate of which auditing and allowance was filed in the town clerk's office of said town on the — day of —, 1——.¹

Dated —, 1——.

I. P.

Or, as above, to (*), and from thence as follows: justice of the peace of the town of —, in said county, hereby appeals to, etc. (as above), from the disallowance (or, reduction) by the town board of said town, at, etc. (as above), of the account of said M. F. (conclude as above, substituting words "disallowance" or "reduction" for "allowance" therein).

1. See section 163 of chapter 569 taken within fifteen days after the of Laws of New York of 1890, as to filing of certificate of allowance or this notice. The appeal is to be disallowance.

No. 1067.

Affidavit to be annexed to account presented for audit to town board, etc.

(Laws of N. Y. of 1890, chap. 569, § 167.)

— COUNTY, ss.:

A. B., of —, being duly sworn, says: That he is the claimant mentioned in (or, the person presenting) the foregoing account; that the items of said account are correct, and that the disbursements and services charged therein have been in fact made or rendered [or, are necessary to be made or rendered at the session of the town board (or, board of town auditors) of the town of —, in the county of — (or, of the board of supervisors of the county of —, in said county), to be held at, etc., on, etc.], and that no part thereof has been paid or satisfied.¹

A. B.

(Jurat, as in form No. 32.)

1. See section 167 of chapter 569 of Laws of New York of 1890, as to this affidavit, which is to be attached to and filed with any account rendered to the board of town auditors or supervisors, or superintendent of the poor for any services and disbursements, and is to be made by the person presenting or claiming the same. Such account is to be made out in items. The chairman of the board or either of the superintendents may administer any oath required by that section. See, also, section 168, id.

No. 1068.

Abstract of names of persons who have presented to board of town auditors, accounts to be audited, etc.

(Laws of N. Y. of 1890, chap. 569, § 170.)

To the board of supervisors of the county of — :

The following abstract of the names of all persons who have presented to the board of town auditors of the town of —, in said county, accounts to be audited during the year 1—, the amounts claimed by each of such persons, and the amounts finally audited by the said board of town auditors, is herewith submitted, pursuant to statute, to wit :¹

| NAMES. | Amounts claimed. | Amounts finally audited. |
|------------|------------------|--------------------------|
| A. F. | \$ — —. | \$ — —. |
| | | |

(Signatures and description.)

1. See section 170 of chapter 569 of Laws of New York of 1890, as to this abstract, which is to be delivered to the clerk of the board of super-
visors. As to election, number, powers, etc., of town auditors, see sections 172-177 of same chapter.

No. 1069.

Appointment by town board of town fire company, or to fill a vacancy therein.

(Laws of N. Y. of 1890, chap. 569, § 171.)

We, the undersigned, composing the town board of the town of —, in the county of —, at a meeting of said board, held at, etc., on, etc., do hereby appoint (*) P. R., etc. (naming persons), inhabitants of said town, to be a fire company, for the extinguishment of fires in said town.

In witness, etc. (as in form No. 1031).¹

(Signatures, as in form No. 1070.)

[Or, as above to (*), and from thence as follows C. M., an inhabitant of said town, to fill a vacancy in the fire company heretofore appointed for the extinguishment of fires in said town, occasioned by the death, etc., of P. R.

In witness, etc. (as above).

(Signatures, as above.)]

1. See section 171 of chapter 569 of Laws of New York of 1890, as to this appointment, and as to filling vacancies by town board in such companies, occasioned by death, resignation or otherwise. See, also, amendment to said section 171 by chapter 201 of Laws of 1894.

No. 1070.

Appointment of temporary board of town auditors by town board.

(Laws of N. Y. of 1890, chap. 569, § 175.)

We, the undersigned, constituting (a majority of) the town board of the town of —, in the county of —, having convened at (naming place) in said town, at 10 o'clock in the forenoon, on the — day of —, 1—, do hereby appoint, pursuant to statute, A. M., M. N. and P. R. to be town auditors of said town, until the next annual town meeting to be held in said town.

In witness whereof, we have hereunto set our hands and seals this — day of —, 1—.¹

A. B.,

Supervisor. [L. S.]

C. D.,

Town Clerk. [L. S.]

E. F.,

G. H.,

Justices of the Peace. [L. S.]

1. See section 175 of chapter 569 of Laws of New York of 1890, as to this appointment, which is immediately to be filed with the town clerk. See oath of office of town auditors form No. 1070.

No. 1071.**Appointment by supervisor to fill vacancy in the board of town auditors.**

(Laws of N. Y. of 1890, chap. 569, § 176.)

I, F. H., supervisor of the town of —, in the county of —, do hereby appoint, pursuant to statute, I. L., as town auditor of said town, to fill the vacancy in the board of town auditors of said town, occurring by reason of the (death) of A. M., and to hold said office until the next annual town meeting of said town.¹

Dated —, 1—.

F. H.,
Supervisor.

1. See section 176 of chapter 569 of Laws of New York of 1890, as to this appointment, and see amendment to said section 176 by chapter 200 of Laws of 1895.

TITLE VII.**FORMS RELATING TO THE TOWN MUNICIPAL DEBT LAW.**

(Laws of N. Y. of 1890, chap. 569, art. 9.)

No. 1072. Report of supervisor to board of supervisors of public debt of town.**No. 1072.****Report of supervisor to board of supervisors of public debt of town.**

(Laws of N. Y. of 1890, chap. 569, §§ 210, 211, 213.)

To the board of supervisors of the county of —:

I, E. F., supervisor of the town of —, do hereby report, pursuant to statute, the amount of the public indebtedness of said town as follows:

| AMOUNT. | Rate of interest thereupon. | Amou unpaid at time of my election. | Amount paid at the date of this report. |
|---|-------------------------------|--|---|
| — bonds of \$ — each, dated —, I —, principal payable in — years from date, with (semi-annual) interest there- upon, issued un- der act chapter —, of I —... | — per centum per annum. | \$ — of principal, with in- terest thereon from — I —. | \$ — of principal with inter- est thereon from —, —. |

(And so on, stating each indebtedness separately, in tabular form.)

In witness whereof, I have hereunto set my hand, this —
day of —, 1 —.¹

E. F.,

Supervisor.

1. See sections 210, 211 and 213 of chapter 569 of Laws of New York of 1890, as to this report, which, by section 212 of same chapter, is to be published in the annual report of the board of supervisors. See, also, as to duplicate report of supervisor at expiration of his term of office, to annual town meeting, section 213 of same chapter.

TITLE VIII.

FORMS RELATING TO TOWN BUSINESS IN COUNTIES OF MORE THAN THREE HUNDRED THOUSAND INHABITANTS.

(Laws of N. Y. of 1890, chap. 569, art 10.)

No. 1073. Division of town into election districts.

1074. Certificate of alteration of election districts.

1075. Notice of election.

1076. Appointment to fill vacancy in town office.

No. 1073.

Division of town into election districts.

(Laws of N. Y. of 1890, chap. 569, § 223.)

We, the undersigned, the supervisor, town clerk and assessors of the town of —, in the county of —, do

hereby certify, pursuant to statute, that (*) we have this day divided the said town into — election districts, as follows:

The first district is bounded and described as follows:
(describe same).

The second district is bounded and described as follows:
(describe same).

(And so on as to each district.)

In witness, etc. (as in form No. 1031, omitting words "and seals").¹

| | |
|------------|-------------|
| E. H., | F. F., |
| I. P., | Town Clerk. |
| M. N., | B. R., |
| Assessors. | Supervisor. |

1. See section 223 of chapter 569 of Laws of New York of 1890, as to this certificate, which relates to towns containing more than five hundred electors.

See amendment of article 10 of chapter 569 of Laws of 1890 by chapter 387 of Laws of 1893, which amended article is entitled "Town business in counties of more than six hundred thousand inhabitants." That amendment took effect Jan. 1, 1894.

No. 1074.

Certificate of alteration of election districts.

(Laws of N. Y. of 1890, chap. 569, § 223.)

As in last form to (*), and from thence as follows: that we hereby alter the boundaries of the election districts of said town, and that said boundaries are to be as follows:

The first district is bounded, etc. (as in form No. 1073, to end thereof).

(Signatures, as in form No. 1073.)

No. 1075.

Notice of election.

(Laws of N. Y. of 1890, chap. 569, § 227.)

To the electors of the town of —, in the county of —:

Notice is hereby given, pursuant to statute, that the next general election (or, special election appointed by the governor of this State) will be held on the — day of —, 1—, in election district No. 1, at the town house in said district; in election district No. 2, at the (stating place) in said district,

and that the polls will be opened on said day at — o'clock in the — noon, and closed at sunset of that day, at which election the following officers will be elected, to wit: (stating the officers to be elected, including the town officers, of whom a statement is to be furnished by the town clerk).

Dated at —, the — day of —, 1——.¹

(Signatures and descriptions.)

1. See section 227 of chapter 569 of Laws of New York of 1890, as to this notice; but it is provided by that section that no such election is to be held illegal for want of proper notice.

See note 1 to form No. 1073 and the amendment therein referred to, of article 10 of said chapter 569.

No. 1076.

Appointment to fill vacancy in town office.

(Laws of N. Y. of 1890, chap. 569, § 228.)

We, the undersigned, the supervisor and (a majority of the) justices of the peace of the town of —, in the county of —, do hereby certify, pursuant to statute, that at a meeting held this day in the town hall of said town, at — o'clock, A. M. (*), we have accepted the resignation of M. P., (a justice of the peace) of said town, and that we have appointed, and do hereby appoint, A. E. to fill the vacancy occasioned by the said resignation, and to serve until the first day of (January), 1——.¹

Witness our hands this — day of —, 1——.

(Signatures and descriptions.)

[Or, as above to (*), and from thence as follows: we have appointed, and we do hereby appoint, A. E. to fill the vacancy in the office of (justice of the peace), occasioned by the death (etc.) of M. P., a (justice of the peace) of said town, to serve until the first day of (January), 1——.

Witness, etc., as above.

(Signatures, as above.)]

1. See section 228 of chapter 569 of Laws of New York of 1890, as to this appointment. The certificate of the appointment is to be filed forthwith in the town clerk's office. In the case of collectors the appointment is until the first day of May next succeeding the then ensuing general election; in the case of any

other officer, until the first day of January next succeeding such election.

For form of oath of office, see form No. 1019; for form of undertaking, see form No. 1022, and see section 230 of same chapter as to such oath and undertaking.

See note 1 to form No. 1073 and the amendment therein referred to of article 10 of said chapter 569, and see section 232 of that article as amended.

CHAPTER XLII.

Forms Relating to Trade Marks, and Applications Therefor.

No. 1077. Letters of advice.

1078. Statement by an individual.

1079. Statement by a firm.

1080. Statement by a corporation.

1081. Declaration to be annexed to statement.

1082. Amendment of statement.

1083. Form of application for registration of prints and labels.

No. 1077.**Letter of advice.**

To the commissioner of patents:

The undersigned presents herewith a fac simile of his lawful trade mark, and requests that the same, together with the accompanying statement and declaration, may be registered in the United States Patent Office, in accordance with the law in such cases made and provided.¹

A. B.

1. Independent of legislation declaring rights in trade marks, there is a general doctrine of equity protecting them which is well understood. Every one is at liberty to affix to a product of his own manufacture any symbol or device not previously appropriated, which will distinguish it from articles of the same general nature, manufactured and sold by others, and thus secure to himself the benefit of increased sale by reason of any peculiar excellence he may have given to it. The symbol or device thus becomes a sign to

the public of the origin of the goods to which it is attached, and an assurance that they are the genuine article of the original producer; and the courts will protect him in the exclusive use of it. (*Manufacturing Co. v. Trainer*, 101 U. S. 51.)

Property in a trade mark or name has very little analogy to that in copyrights or patents. The property is not in the abstract name, except as denoting that the article marked is manufactured by a certain person, so that no one else may put the mark on his own goods to pass them off as

the production of him who has the first right to use the trade mark. (*Osgood v. Allen*, 1 Holmes, 185; 6 Am. L. T. 20; 7 Am. L. Rev. 568.) See, also, *United States v. Roche* (1 McCrary, 385).

The rights and remedies concerning trade marks generally depend upon the laws of the States, common or statutory, and not upon the laws of the United States. (*Luytes v. Hollender*, 21 Fed. Rep. 281.)

In the year 1870, an act was passed by Congress relating to trade marks, the provisions of which are contained in sections 4937-4947 of the Revised Statutes of the United States.

This act was held to be unconstitutional. In 1876, August 14, another act was passed by Congress to punish counterfeiting of trade marks, etc., which was also declared to be unconstitutional. See *Trade Mark Cases* (100 U. S. 82). Another act of Congress was passed March 3, 1881, entitled "An act to authorize the registration of trade marks and protect the same," under which and the act of June 18, 1874 (18 Stats. at Large, p. 78), the forms contained in this chapter are prepared, and sanctioned by the United States Patent Office.

The following are among the rules and forms adopted by the United States Patent Office for the registration of trade marks under the act of March 3, 1881:

WHO MAY OBTAIN REGISTRATION.

1 (a) Any person, firm or corporation domiciled in the United States or located in any foreign country which, by treaty, convention, or law, affords similar privileges to citizens of the United States, and who is entitled to the exclusive use of any trade mark and uses the same in commerce with foreign nations or with Indian tribes.

(b) Any citizen or resident of this country wishing the protection of his trade mark in any foreign country, the laws of which require registration in the United States as a condition precedent.

STATUTORY REQUIREMENTS.

2. Every applicant for registration of a trade mark must cause to be recorded in the patent office:

(a) The name, domicile and place of business or location of the firm or corporation desiring the protection of the trade mark, and the residence and citizenship of individual applicants.

(b) The class of merchandise and the particular description of goods comprised in such class to which the trade mark has been appropriated.

(c) A description of the trade mark itself, with fac similes thereof, and the mode in which it has been applied and used.

(d) The length of time during which the trade mark has been used by the applicant on the class of goods described.

3. A fee of \$25 is required on filing each application, except in the cases hereinafter named.

THE APPLICATION.

4. An application for the registration of a trade mark will consist of a statement or specification, a declaration or oath, and the fac simile with duplicates thereof. The statement and declaration should be written on one side of the paper only.

5. These should be preceded by a brief letter of advice requesting registration and signed by the applicant.

6. The statement should announce the full name, citizenship, domicile, residence and place of business of the applicant (or, if the applicant be a corporation, under the laws of what State or nation incorporated), with a full and clear specification of the trade mark, particularly discriminating between its essential and non-essential features. It should also state from what time the trade mark has been used by the applicant, the class of merchandise and the particular goods comprised in such class to which the trade mark is appropriated, and the manner in which the trade mark has been applied to the goods.

7. The declaration should be in the form of an oath by the person, or by a member of the firm, or by an officer of the corporation making the application, to the effect that the party has at the time of filing his application a right to the use of the trade mark described in the statement; that no other person, firm or corporation has a right to such use, either in the identical form or in such near resemblance thereto as might be calculated to deceive; that such trade mark is used in lawful commerce with foreign nations or Indian tribes, one or more of which should be particularly

named; and that it is truly represented in the fac simile presented for registry.

8. This oath may be taken within the United States before a notary public, justice of the peace or the judge or clerk of any court of record. In any foreign country it may be taken before the secretary of a legation or consular officer of the United States, or before any person duly qualified by the laws of the country to administer oaths, whose official character shall be certified by a representative of the United States having an official seal.

FAC SIMILES TO BE FILED.

9. Where the trade mark can be represented by a fac simile which conforms to the rules for drawings of mechanical patents, such a drawing may be furnished by applicant, and the additional copies will be produced by the photolithographic process at the expense of the office. Or the applicant may furnish one fac simile of the trade mark, mounted on a card ten by fifteen inches in size, and ten additional copies upon flexible paper, not mounted; but in all cases the sheet containing the mounted fac simile or the drawing must be signed by the applicant or his authorized attorney, and authenticated by two witnesses.

PROCEEDINGS IN THE OFFICE.

10. All applications for registration are considered in the first instance by the trade mark examiner. An adverse decision by such examiner upon the applicant's right to registration will be reviewed by the commissioner in person upon petition without fee.

11. No trade mark will be registered unless it shall be made to appear that the same is used as such by the applicant in commerce between the United States and some foreign nation or Indian tribe, or is within the provisions of a treaty, convention or declaration with a foreign power, nor which is merely the name of the applicant, nor which is identical with a known or registered trade mark owned by another and appropriated to the same class of merchandise, or which so nearly resembles some other person's lawful

trade mark as to be likely to cause confusion in the mind of the public or to deceive purchasers.

12. The statement may be amended to correct informalities or to avoid objections made by the office, or for other reasons arising in the course of examination ; but no amendments will be admitted unless warranted by something in the statement or fac simile as originally filed. In respect to amendments the established rules in regard to applications for patents will be observed. The declaration cannot be amended. If that filed with the application is faulty or defective, a substitute declaration may be filed.

13. In case of conflicting applications for registration, or in any dispute as to the right to use which may arise between an applicant and a prior registrant, the office will declare an interference, in order that the parties may have an opportunity to prove priority of adoption or right ; and the proceedings on such interference will follow, as nearly as practicable, the practice in interferences upon applications for patents ; but each applicant and registrant will be held to the date of adoption alleged in the statement filed with his application. On the petition of any party dissatisfied with the decision of the examiner of interferences, the case will be reviewed by the commissioner without fee.

14. When these requirements have been complied with, and the office has adjudged the trade mark lawfully registrable, a certificate will be issued by the commissioner, under seal of the Interior Department, to the effect that applicant has complied with the law, and that he is entitled to the protection of his trade mark in such case made and provided. Attached to the certificate will be a fac simile of the trade mark and a printed copy of the statement and declaration.

15. The protection for such trade mark will remain in force for thirty years, and may, upon the payment of a second fee, be renewed for thirty years longer, except in cases where such trade mark is claimed for and applied to articles not manufactured in this country, and in which it receives protection under the laws of any foreign country for a shorter period, in which case it will cease to

have force in this country, by virtue of the registration, at the same time that the trade mark ceases to be exclusive property elsewhere.

16. The right to the use of any trade mark is assignable by an instrument in writing, and such assignment of a registered trade mark must be recorded in the patent office within sixty days after its execution, in default of which it may be void as against any subsequent purchaser or mortgagee, for a valuable consideration, without notice. No particular form of assignment or conveyance is prescribed, but the trade mark must be identified by the certificate number.

17. Owners of trade marks for which protection has been sought by registering them in the patent office under the act of July 8, 1870 (declared unconstitutional by the Supreme Court of the United States), may register the same for the same goods, without fee, on compliance with the foregoing requirements. With each application of this character, a specific reference to the date and number of the former certificate is required.

18. Applicants whose cases were filed under the act of 1870, either prior to or since the decision of the Supreme Court declaring it unconstitutional, which are now pending before the office, are advised to prepare applications in conformity with the law and foregoing rules. On the receipt of such an application, referring to the date of the one already filed, all fees paid thereon will be duly applied. Those who have paid only \$10 as a first fee are advised that the law does not provide for a division of the legal fee of \$25, and that the remainder of the entire fee is required before the application can be entertained.

No. 1078.

Statement by an individual.

To all whom it may concern :

Be it known that I, A. B., a citizen of the United States, residing at Baltimore, Maryland, and doing business at No. — — street, in said city, have adopted for my use a trade mark for whisky, of which the following is a full, clear and exact specification :

My trade mark consists of the word-symbol Moonshine. This has generally been arranged as shown in the accompanying fac simile, which represents a rude still-house surrounded by hills and forests. Three men are engaged variously about, and the scene is illuminated partly by the light of the fire, partly by the moon which appears in the heavens. Underneath the picture appears the word "moonshine" in ornamental letters; but the style of lettering is unimportant, and the entire picture may be omitted or changed at pleasure without materially affecting the character of my trade mark, the essential feature of which is the word-symbol Moonshine.

This trade mark I have used continuously in my business since July 4, 1876. The class of merchandise to which this trade mark is appropriated is distilled liquors, and the particular description of goods comprised in said class upon which I use it is whisky. It is my practice to apply my trade mark to the bottles containing the liquor by means of suitable labels, on which it is printed in color, as above described. The word is sometimes also blown into the bottles.¹

Witnesses:

A. B.

C. D.

E. F.

(Annex form No. 1077.)

1. By section 1 of the act of congress of March 3, 1881, it is provided that the owners of trade marks used in commerce with foreign nations or with the Indian tribes, provided such owners shall be domiciled in the United States, or located in any foreign country, or tribes, which, by treaty, convention, or law, affords similar privileges to citizens of the United States, may obtain registration of such trade marks by complying with the following requirements:

First. By causing to be recorded in the patent office a statement specifying name, domicile, location, and citizenship of the party applying; the class of merchandise, and the particular description of goods com-

prised in such class to which the particular trade mark has been appropriated; a description of the trade mark itself, with fac similes thereof, and a statement of the mode in which the same is applied and affixed to goods, and the length of time during which the trade mark has been used.

Second. By paying into the treasury of the United States the sum of twenty-five dollars, and complying with such regulations as may be prescribed by the commissioner of patents.

See, also, section 2 of that act cited in note 1 to form No. 1081, and see note 1 to last form, No. 1077.

No. 1079.**Statement by a firm.**

To all whom it may concern :

Be it known that we, C. D. & Co., a firm domiciled in Brooklyn, Kings county, State of New York, and doing business at No. — — street, in said city, have adopted for our use a trade mark for men's overalls, of which the following is a full, clear and exact specification :

Our trade mark consists of the arbitrary word Toulon. This has generally been arranged as shown in the accompanying fac simile, in which it appears in plain, block capitals, printed in black in a horizontal line. But other forms of type may be employed, or it may be differently arranged or colored, without materially altering the character of our trade mark, the essential feature of which is the word "Toulon."

This trade mark has been used continuously in business by us and those from whom we derive our title since July 11, 1840.

The class of merchandise to which this trade mark is appropriated is wearing apparel, and the particular description of goods comprised in such class on which it is used by us is men's overalls. It has been our practice to mark our trade mark on the inside of the waistband of the goods with a stencil, or to print it upon tags which are secured to the goods in any desired manner.¹

Witnesses :

C. D. & Co.

D. E.

F. G.

(Annex form No. 1077.)

1. See note to forms Nos. 1077 and 1078.

No. 1080.**Statement by a corporation.**

To all whom it may concern :

Be it known that the Rocky Mountain Mill Company, a corporation organized under the laws of the Territory of Da-

kota, and located in the city of Garfield, Hancock county, in said Territory, and doing business in said city of Garfield, and also at Chicago, Illinois, has adopted for its use a trade mark for wheat flour, of which the following is a full, clear and exact specification :

The trade mark of said company consists of a representation of a Rocky Mountain sheep and the words Big Horn. These have generally been arranged as shown in the accompanying fac simile, in which the animal named, popularly known as the "Big Horn," is represented in an erect attitude upon a cliff or rock. In the background are mountains covered with forests, with distant white peaks; upon the sky portion are the words "Big Horn," and arranged in a circle about the whole are the words "Rocky Mountain Mill Company" in plain capital letters. But these words may be omitted, and the various accessories of the picture may be varied at pleasure or altogether omitted, without materially altering the character of the said trade mark, the essential features of which are the words "Big Horn" and the representation of a Rocky Mountain sheep.

This trade mark has been continuously used by said corporation since about the middle of October, 1884.

The class of merchandise to which this trade mark is appropriated is flour, and the particular description of goods comprised in such class on which it is used by the said company is wheat flour. It is usually affixed to the goods by printing it on the bags or stenciling it on the heads of barrels in which the flour is packed.¹

Rocky Mountain Mill Company
By G. F., President.

Witnesses :²

J. H.
L. K.

1. See note 1 to forms Nos. 1077 and 1078. may be used to authenticate the signature of the officer.

2. If a corporation have a seal it

No. 1081.

Declaration to be annexed to statement.

STATE OF —, }
County of —, } ss.:

A. B., being duly sworn, deposes and says that he is the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that he has at this time a right to the use of the trade mark therein described; that no other person, firm or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it is used by him in commerce between the United States and foreign nations or Indian tribes, and particularly with — (here name one or more foreign nations or Indian tribes, or both, as the case may be); and that the description and fac similes presented for record truly represent the trade mark sought to be registered.¹

A. B.

Sworn and subscribed before me, a —, }
this — day of —, 1—

G. H.,

Justice of the Peace.

1. Section 2 of the act of congress of March 3, 1881, provides that the application prescribed in the foregoing section must, in order to create any right whatever in favor of the party filing it, be accompanied by a written declaration verified by the person, or by a member of the firm, or by an officer of a corporation applying, to the effect that such party has at the time a right to the use of the trade mark sought to be registered, and that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that such trade mark is used in commerce with foreign nations or Indian tribes, as above indicated; and that the description and fac similes presented for registry truly represent the trade mark sought to be registered. See, also, note 1 to forms Nos. 1077 and 1078.

If the application is made by a firm or corporation, this declaration should be modified accordingly. Thus.

FOR A FIRM.

A. B., being duly sworn, deposes and says that he is a member of the firm, the applicant named, etc. * * * that the trade mark is used by the said firm in commerce, etc.

FOR A CORPORATION.

A. B., being duly sworn, deposes and says that he is secretary (or, other officer) of the corporation, the applicant named in the foregoing statement, etc. * * * that the trade mark is used by said corporation in commerce, etc.

No. 1082.

Amendment of statement.

To the commissioner of patents:

In the matter of my application for registration of trade mark for watches, No. 5319, filed June 11, 1876, I desire to amend my statement as follows:

Page 1, line 16, cancel the words "the arbitrary word Zenith," and insert in the place thereof the following: 'the representation of a five-pointed star, having the word 'Zenith' printed across its face.'

Same page, line 20, erase "about four years" and insert "since July 1st, 1872."

A. B.,

By P. & Q.,

His Attorneys.

Dated GENEVA, SWITZERLAND, *October 1*, 1876.

1. See rule 12 of patent office annexed to note 1 to form No. 1078, as to amendment of statement.

No. 1083.

Form of application for registration of prints and labels.

FOR AN INDIVIDUAL.

To the commissioner of patents:

The undersigned, A. B., of the city of Brooklyn, county of Kings, and State of New York, and a citizen of the

United States (or, resident therein, as the case may be), hereby furnishes five copies of a label (or, print, as the case may be), to be used for —, of which he is the sole proprietor. The title of said label (or, print) is —, and the said label (or, print) consists of the words and figures as follows, to wit:—

(Description).

And he hereby requests that the said print (or, label) be registered in the patent office, in accordance with the act of congress to that effect approved June 18, 1874.

[Making necessary changes to suit each case.]

_____,
Proprietor.

BROOKLYN, N. Y., *August 1, 1874.*

FOR A CORPORATION.

To the commissioner of patents:

The applicant, a corporation created by authority of the Laws of the State of New York (or, other authority, as the case may be), and doing business at —, in said State, hereby furnishes five copies of a label (or, print, as the case may be), to be used for —, of which it is the sole proprietor. The title of said print (or, label) is —, and the said label consist of the words and figures as follows, to wit: —
(Description.)

And it is hereby requested that the said label (or, print) be registered in the patent office, in accordance with the act of congress to that effect, approved June 18, 1874.

Witness the seal of said corporation at — —, 1874.¹

[L. S.]

_____,
President (or, other officer).

1. The registration of copyright matter is, by law, under the control of the librarian of congress at Washington. At the time of the enactment of the trade mark law of July 8, 1870, it was the custom of the librarian of congress to enter, under the provisions of the copyright law, labels and prints of commerce, many of which embraced legal trade marks.

Notwithstanding the existence of a separate statute in 1870 for the registration of trade marks, the librarian of congress, in entering labels and prints of commerce, gave a semblance of protection to many trade marks, of which the labels and prints entered by him were the mere vehicles. To remedy this difficulty was the object of the amendment to the

copyright law of June 18, 1874, referred to herein as the act for the registration of prints and labels. By this amendatory act the librarian of congress is restricted, in the registry of copyright matter, to pictorial illustrations or works connected with the fine arts, and is prohibited from registering labels or prints designed to be used for any other articles of manufacture, *i. e.*, articles of commerce. These are now registrable at the patent office; while matter properly coming within the definition of copyright subject matter, as contained in the act of June 18, 1874, is registrable at the office of the librarian of congress. (See pamphlet issued from U. S. Patent Office, Nov. 1, 1886.)

Sections 3, 4 and 5 of the act of congress relating to patents, trade marks and copyrights, approved June 18, 1874 (18 Statutes at Large, 78), are as follows:

"SEC. 3 That in the construction of this act the words 'engraving, cut and print,' shall be applied only to pictorial illustrations or works connected with the fine arts, and no prints or labels designed to be used for any other articles of manufacture shall be entered under the copyright law, but may be registered in the patent office. And the commissioner of patents is hereby charged with the supervision and control of the entry or registry of such prints or labels, in conformity with the regulations provided by law as to copyright and prints, except that there shall be paid for recording the title of any print or label, not a trade mark, six dollars, which shall cover the expense of furnishing a copy of the record, under the seal of the commissioner of patents, to the party entering the same.

"SEC. 4. That all laws and parts of laws inconsistent with the foregoing provisions be and the same are hereby repealed.

"SEC. 5. That this act shall take effect on and after the first day of August, eighteen hundred and seventy-four."

The words "prints" and "labels" as used in this act, so far as it relates to registration in the patent office, are construed as synonymous, and are defined as any device, picture, word or words, figure or figures (not a trade mark) impressed or stamped directly upon the articles of manufacture, or upon a slip or piece of paper or other material, to be attached in any manner to manufactured articles, or to bottles, boxes and packages containing them, to indicate the contents of the package, the name of the manufacturer or the place of manufacture, the quality of goods, directions for use, etc.

By the words "articles of manufacture" (to which such print or label is applicable by this act), is meant all vendible commodities produced by hand, machinery or art.

But no such print or label can be registered unless it properly belongs to an article of commerce, and be as above defined; nor can the same be registered as such print or label when it amounts to a lawful trade mark, or when its use in connection with the article to which it is applied is arbitrary or fanciful.

To entitle the owner of any such print or label to register the same in this office, it is necessary that five copies of the same be filed, one of which copies shall be certified under the seal of the commissioner of patents, and returned to the registrant.

TRADE MARK TREATIES WITH FOREIGN NATIONS.

The following is a list of the governments with which conventions for the reciprocal registration and protection of trade marks have been entered into by the United States, with the dates of the respective conventions. For the full text of those which have been published in the *Official Gazette* reference is made thereto. For others, to the volume and page of United States Statutes at Large. The laws of Switzerland and the Netherlands being so framed as to afford reciprocal privileges to the citizens or subjects of any government which affords similar privileges to the people of those countries, the mere exchange of diplomatic notes, giving notice of the fact, accomplishes all the purposes of a formal convention. The reference to the *Official Gazette* opposite these nations gives the full text of their trade mark laws:

| COUNTRY. | Date. | Reference. |
|-----------------------|----------------|--------------------|
| Austria-Hungary | June 1, 1872 | Stat., 17, p. 917 |
| Belgium | July 30, 1869 | Stat., 16, p. 765 |
| do | July 9, 1884 | O. G., 29, p. 452 |
| Brazil | Sept. 24, 1878 | Stat., 21, p. 659 |
| France | Apr. 16, 1869 | Stat., 16, p. 771 |
| German Empire | June 1, 1872 | Stat., 17, p. 921 |
| Great Britain | July 17, 1878 | O. G., 14, p. 233 |
| Italy | Mar. 19, 1884 | O. G., 27, p. 304 |
| Russia | June 27, 1868 | Stat., 16, p. 725 |
| Servia | Dec. 27, 1882 | Stat., 22, p. 966 |
| Spain | Apr. 19, 1883 | O. G., 25, p. 98 |
| Switzerland | May 16, 1883 | O. G., 23, p. 2237 |
| The Netherlands | Feb. 16, 1883 | O. G., 23, p. 1334 |

The declaration with Great Britain is drawn so as to confer mutual trade mark rights upon the subjects and citizens of each of the contracting parties throughout the dominions and possessions of the other. Citizens or residents of British colonies are, therefore, permitted to register their trade marks under this treaty whenever it is satisfactorily shown that in the respective colonies similar protection is afforded to citizens of the United States.

CHAPTER XLIII.

Forms of Undertakings.

(See, also, the various titles under which they are required; and see BONDS, TOWNS.)

No. 1084. General form of undertaking.

1085. Undertaking of county treasurer.

1086. Same of county clerk.

1087. Same of sheriff.

1088. Same of district attorney.

1089. Same of superintendent of the poor.

1090. Same of surrogate.

1091. Same of coroner, acting as sheriff.

1099. Certificate of appointment of special constable by supervisor, etc.

No. 1084.**General form of undertaking.**

Whereas (reciting facts):

Now, therefore, we, A. F., of — (stating occupation), and B. G., of — (stating occupation), do hereby jointly and severally undertake (to and with R. P.), pursuant to the statute (in the sum of — dollars), that (state terms of undertaking).¹

Dated —, 1—.

A. F.

B. G.

In presence of

M. R.

(Acknowledgment, justification and approval, when required, substantially as in form No. 302.)

1. An undertaking is merely a 20 Abb. N. C. 245). See, also, note simplified bond, without seal. (People, *ex rel.* Commissioners, v. Dando, to that case.

No. 1085.

Undertaking of county treasurer.

(Laws of N. Y. of 1892, chap. 686, § 140.)

Whereas, the undersigned, A. B., of, etc., has been duly elected at a general (or, special) election held in the county of —, on the — day of —, 1— (*), (or, has been duly appointed by the board of supervisors (or, by the county judge) of the county of —), county treasurer of said county:

Now, therefore, we, the said A. B. and I. J., of —, K. L., of —, and M. N., of —, do hereby jointly and severally undertake, in the sum of — dollars, that said A. B. shall and will faithfully execute the duties of his said office, and shall and will pay over, according to law, and account for all monies, property and securities which shall come to his hands as such treasurer, and render a just and true account thereof to the board of supervisors of said county, when required; and obey all orders and directions of a competent court relating thereto.

Witness our hands at, etc., this — day of —, 1—.¹

A. B.

I. J.

In presence of

K. L.

R. S.

M. N.

(Acknowledgment, etc., as in form No. 220.)

(Approval of board of supervisors when in session, as in next form, No. 1086; otherwise, of the county judge and county clerk, as in form No. 567.)

1. See section 140 of chapter 686 of Laws of New York of 1892, as to this undertaking, which, with the approval indorsed thereon, is to be filed in the office of the county clerk. The sureties and the county therein named shall be liable to the State for the payment to the State treasurer, according to law, of all moneys be-

longing to the State, which shall come into his hands as county treasurer; and for the rendering of a just and true account thereof to the State comptroller. (Id.) And see amendment to that section by chapter 222 of Laws of 1893.

Section 237 of same chapter provides as follows: Every undertaking required by that chapter must be executed by the officer or person in

whose behalf it is given, and his sureties, and duly acknowledged or proven and certified, and the approval indorsed thereon. The parties executing the same shall be jointly and severally liable, regardless of its form in that respect, for the damages sustained by reason of a breach thereof.

Every officer or board required to approve an undertaking may examine each surety thereto under oath, and shall not approve the same unless the sureties are freeholders of the State and jointly worth, over and above their debts and liabilities, at least double a sum which such officer or board may fix upon and insert in the undertaking as reasonably sufficient to indemnify the county, and every person who may be or become

interested therein, or in any breach thereof.

Official bonds and undertakings, including the bonds of executors, administrators, guardians and trustees, required by law to be filed in the office of the county clerk or surrogate, shall also be recorded in such offices respectively, in a book to be provided and kept in each of such offices, to be designated "Book of Official Bonds and Undertakings." The county clerk and surrogate's clerk shall respectively be entitled to the same fees for such recording, as are allowed to county clerks for recording conveyances, except that in counties where the surrogate's clerk is a salaried officer he shall not be entitled to any fee for such services.

See, also, sections 11 and 12 of chapter 681 of Laws of New York of 1892.

No. 1086.

Undertaking of county clerk.

(Laws of N. Y. of 1892, chap. 686, § 160.)

As in form No. 1085, to (*), and from thence as follows: (or, has been duly appointed by, etc.) county clerk of the said county:

Now, therefore, we, the said A. B. and I. J., of, etc., and K. L., of, etc., do hereby, jointly and severally, undertake, pursuant to law, in the sum of — dollars, that said A. B. shall and will faithfully execute and discharge the duties of county clerk of said county, and account for all moneys deposited with him, pursuant to law, or the order of any court, or by his predecessor in office, and pay them over as required by law, or directed by such order.

Witness, etc. (as in last form, No. 1085).¹

In presence of

R. S.

(Acknowledgment, etc., as in form No. 220.)

A. B.
I. J.
K. L.

Indorsed :—

The foregoing bond was approved by a resolution of the board of supervisors of the county of —, passed —, 1—, at a session of said board held at —.

A. F.,
Clerk.

(or, approved by County Judge, or Justice of Supreme Court residing in the county, as in form No. 567).

1. See section 160 of chapter 686 237 of same chapter as to official undertakings generally.
this undertaking; and see section

No. 1087.

Undertaking of sheriff.

(Laws of N. Y. of 1892, chap. 686, § 180.)

As in form No. 313, from (**) to the end of paragraph, and from thence, as follows :

Now, therefore, we, the said A. B. and I. J., of, etc., and K. L., of, etc., do hereby, jointly and severally, undertake, to and with the said county of —, that said A. B. will, in all things, perform and execute the office of sheriff of said county, during his continuance therein, without fraud or deceit.

Witness, etc. (as in form No. 1085).¹

A. B.
I. J.
K. L.

In presence of

R. S.

(Acknowledgment, etc., as in form No. 220.)

(Approval by county clerk, as in form No. 567.)

1. Such undertaking shall be filed in the office of the county clerk; and the clerk shall, at the time of his approval thereof, examine each surety thereto under oath; and he shall not approve of such undertaking unless it shall appear on such examination that such sureties are jointly worth at least fifteen thousand dollars over and above all debts whatever, which examination, subscribed by the sureties, shall be indorsed on or attached

to the undertaking; but the clerk shall determine the sufficiency of each surety. In the same manner, the security shall be renewed within twenty days after the first Monday of January in each year subsequent to that in which he shall have entered

upon the duties of his office. (Laws of N. Y. of 1892, chap. 686, § 180.)

See, also, section 237 of same chapter, cited in note 1 to form No. 1085, as to official undertakings generally. Compare, also, form No. 313 with this form, and see amendment to said section 237 by chapter 334 of Laws of N. Y. of 1898.

No. 1088.

Undertaking of district attorney.

(Laws of N. Y. of 1892, chap. 686, § 200.)

As in form No. 1085, to (*), and from thence as follows: (or, has been duly appointed by, etc.), district attorney of the county of —:

Now, therefore, we, the said A. B. and I. J., of, etc., and K. L., of, etc., do hereby jointly and severally undertake, pursuant to statute, with said county, in the sum of — dollars, that said A. B. will faithfully account for and pay over, according to law, or as the court may direct, all moneys that may come into his hands as such district attorney.

Witness, etc. (as in form No. 1085).¹

A. B.

I. J.

In presence of

K. L.

R. S.

(Acknowledgment, etc., as in form No. 220. The sureties must be resident freeholders.)

(Approval by county judge.)

1. See section 200 of chapter 686 of Laws of New York of 1892, as to this undertaking, which is to be delivered to the county clerk of the district attorney's county. See, also,

note 1 to form No. 1085, as to official undertakings generally. This section does not apply to the county of Kings. See, also, chapter 18 of Laws of 1893, p. 35.

No. 1089.

Undertaking of superintendent of the poor.

(Laws of N. Y. of 1892, chap. 686, § 211.)

As in form No. 1085, to (*), and from thence as follows: (or, has been duly appointed by, etc.) a superintendent of the poor of the county of —:

Now, therefore, we, A. B., I. J., of, etc., and K. L., of, etc., do hereby undertake, pursuant to law, with said county, that the said A. B. will faithfully discharge the duties of his office as such superintendent of the poor, and pay, according to law, all moneys that shall come into his hands as such superintendent, and render a just and true account thereof to the board of supervisors of his said county.

Witness, etc. (as in form No. 1085).¹

In presence of

R. S.

A. B.

I. J.

K. L.

(Acknowledgment, etc., as in form No. 220.)

(Approval, as in form No. 1086.)

1. See section 211 of chapter 686 of Laws of New York of 1892, as to this undertaking, which is to be delivered to the clerk of the county, to be filed in his office. See, also, note 1 to form No. 1085, as to official undertakings generally.

No. 1090.

Undertaking of surrogates.

(Laws of N. Y. of 1892, chap. 686, § 221.)

As in form No. 1085, to (*), and from thence as follows: (or, has been duly appointed by, etc.), surrogate of the county of —:

Now, therefore, we, A. B. and I. J., of, etc., and K. L., of, etc., do hereby undertake, pursuant to statute, that the said A. B. will faithfully perform his duties as such surrogate, and apply and pay over all moneys and effects that may come into his hands as such surrogate in the execution of his office.

Witness, etc. (as in form No. 1085).¹ •

In presence of

R. S.

A. B.

I. J.

K. L.

(Acknowledgment, etc. as in form No. 320. The sureties must be resident freeholders.)

1. See section 221 of chapter 686 of Laws of New York of 1892, as to this undertaking, which is to be delivered to the county clerk of the county, who is immediately to file the same in his office. See, also, section 237, cited in note 1 to form No. 1085, as to official undertakings generally.

No. 1091.**Undertaking of coroner acting as sheriff.**

(Laws of N. Y. of 1892, chap. 686, § 187.)

See form No. 567, and note 1 thereto, and see note 1 to form No. 1085, as to official bonds generally.

No. 1092.**Certificate of appointment of special constables by supervisors and two justices of the peace.**

Laws of N. Y. of 1890, chap. 569, § 43, inserted by chap. 252 of Laws of N. Y. of 1892.)

COUNTY OF —, }
 Town of —, } ss.:

We, the undersigned, the supervisor and two justices of the peace of the town of —, in the county of —, do hereby appoint, pursuant to statute, it being in our judgment necessary to make such appointment for the preservation of the public peace, A. B., C. D., E. F., etc., as special constables of said town, said appointment to continue during the —, —, and —, etc. (stating days) days of the month of —, in the year 1—.

Witness our hands at —, on this — day of —,
 1—. ¹

A. H.,
 Supervisor.
 R. S.,
 M. L.,
 Justices.

1. See section 43 of chapter 569 of Laws of New York of 1890, which section was added to that chapter by chapter 252 of Laws of New York of 1892, as to this appointment, duplicate certificates of which, signed by such supervisor and such justices of the peace as such, are to be delivered

to each of said special constables, specifying the days for which he is so appointed, and one of such duplicates is to be filed by such special constables with the town clerk of the town. See same section as to badges, powers and compensation of such constables.

Said section 43 was renumbered as section 41 by chap. 481 of Laws of 1897.

CHAPTER XLIV.

Forms Relating to Warehousemen and Warehouse Companies.

- No. 1093. Notice of sale by warehouse company, or person engaged in warehouse business.
1094. Affidavit of warehouseman or warehouse company on deposit of balance of proceeds of sale with county treasurer, etc.
1095. Same of service of notice of such sale.
1096. Warehouse receipt and voucher.

No. 1093.

Notice of sale by warehouse company or person engaged in warehouse business.

(Laws of N. Y. of 1879, chap. 336, § 1, as amended by Laws of 1883, chap. 421.)

To A. M. (and M. N.):

Notice is hereby given, pursuant to law, that the goods, wares and merchandise hereinafter described, which have been and are now in the possession of the undersigned (company), by virtue of an agreement (or, warehouse receipt) for the storage of the same, and on which is due to said — from (said A. M.), in whose name such goods, wares and merchandise were stored (more than) one year's storage, will be sold by said — at public auction, at (state place of sale) in the (city) of —, on the — day of —, 1 —, at — o'clock in the — noon, unless the said A. M. shall, previous to that time, pay the amount due (or, the arrears) for such storage, which he is hereby required to do, and in case of his default to make such payment said sale will take place as above noticed, and out of the proceeds of said sale the said — will retain his (or, its) charges for storage thereof, and

any advances that may have been made thereon by him (or, it), and the expense of advertising and sale thereof. The following is a description of said goods, etc. (insert same).

Dated —, 1—.

A. B.

(or, The A. B. Company,
by C. K., President.)

1. See section 1 of chapter 336 of Laws of New York of 1879, as amended by Laws of 1883, chapter 421, as to this notice, which is required by section 2, id., to be served, personally, at least four weeks before the time of such sale, upon the party storing the goods, provided such service can be made with reasonable diligence within the State of New York. If such party cannot with reasonable diligence be found within that State, then such notice must be given by publication once in each week for six successive weeks

before the time of such sale, in a newspaper published at or nearest the place where such sale is to take place. In the event that the party storing the goods, etc., shall have parted with the same, and the purchaser shall have notified the warehouseman with his address, such notice shall be given to such person in lieu of the person storing the goods.

In the latter case it will be advisable to give notice to both the purchaser and the person storing the goods, if practicable.

No. 1094.

Affidavit of warehouseman or warehouse company, on deposit of balance of proceeds of sale with county treasurer, etc.

(Laws of N. Y. of 1879, chap. 336, § 3.)

— COUNTY, ss.:

M. N., of —, being duly sworn, says: That he is (the president, etc., of the A. F. Company, which said company is a warehouse company), engaged in the warehouse business at —; that on the — day of —, 1—, the goods mentioned and described hereinafter and in the annexed notice of sale, were sold, at the time and place mentioned in said notice, by F. P., who resides at —, as auctioneer: that a copy of said notice of sale was served upon A. B., the person whose goods, etc., were sold pursuant to said notice, and who resides, so far as is known to deponent (or, to said company) at —, personally, on the — day of —, 1—, as will appear by the annexed affidavit of C. R. [or, by pub-

lication thereof in the (insert name of newspaper), a newspaper published at (or, nearest to) —, the place where said sale was made, once in each week for six successive weeks, immediately preceding said sale, as will appear by the annexed affidavit of F. G.; or, that no notice of said sale was served upon A. B., the person, etc., either personally or by publication thereof, for the following reason (stating same)]; that the articles sold at said time and place, and the prices for which they were respectively sold, were as follows, viz. : (state same).¹

(Jurat, as in form No. 32.)

M. N.

(Annex copy of notice of sale, also affidavits of service referred to in the affidavit, next form, No. 1095.)

1. See section 3 of chapter 336 of treasurer of the county, or if in New Laws of New York of 1879, as to York city, to the chamberlain of that this affidavit and its contents. The city.
payment is to be made to the county

No. 1095.

Affidavit of service of notice of sale made by warehouseman or warehouse company

— COUNTY, ss.:

A. M., of —, being duly sworn, says: (*) That on the — day of —, 1—, at the (city) of —, in the county of —, and State of New York, he served the annexed notice of sale upon M. N., to whom the same is directed, by delivering to and leaving with him, personally, a copy thereof.¹

A. M.

(Jurat, as in form No. 32.)

(Annex notice.)

[Or, in case of service by publication, as above, to (*), and from thence as follows: That he is the printer (or, publisher) [or, one of the printers (or, publishers)] of the (insert name of newspaper), published at the (city) of —, in the county of —, and State of New York; that the annexed notice of sale has been published in the said newspaper once in each

week for six successive weeks, commencing on the — day of —, 1—, and ending on the — day of —, 1—, the first of said publications having been made on the — day of —, 1—. A. M.]

(Jurat, as above.)

(Annex notice.)

1. See note 1 to form No. 1093.

No. 1096.

Warehouse receipt and voucher.

ALBANY, N. Y., —, 1—.

WAREHOUSE RECEIPT AND VOUCHER.

Received in store from — owner, at —, the following property, viz., —, to be held subject to the order of the — bank of —, and which property — agree to deliver only on the written order of the said bank.¹

— hereby certify that the said property has been paid for, and is now free from all liens, charges and incumbrances.

1. See last clause of note 1 to form No. 166; and see N. Y. Penal Code, §§ 629-632, as to penalty in that State for issuing fictitious warehouse receipts, etc., and section 1 of chapter 237 of Laws of N. Y. of 1882, as to interest on demand loans of \$5,000 and upwards, secured by such receipts. See *Dean v. Driggs* (137 N. Y. 274); *Hanover Nat. Bank v. Am. Dock Co.* (75 Hun, 55), ch. 633 of Laws of N. Y. of 1895; *Driggs v. Dean* (87 Hun, 319).

CHAPTER XLV.

Forms of Wills.

- No. 1097. Will of lands and personal estate, general form.
 1098. Will appointing executor or executors, and leaving the property to be distributed under the statute of distributions.
 1099. Will containing provisions for widow in fulfillment of antenuptial contract, and in lieu of dower and trust provisions, etc.
 1100. Clause which may be inserted in a will, appointing a guardian, etc.
 1101. Clause in will, that sums advanced to children shall be regarded as part of their shares of estate.
 1102. Devise to wife in lieu of dower, remainder to children.
 1103. Form of codicil to a will.
 1104. Another form of codicil to will.
 1105. Form of renunciation by executor.
 1106. Retraction of renunciation by executor.

No. 1097.

Will of lands and personal estate, general form.

I, A. B., of the (city) of —, in the county of — and State of —, do make and publish this my last will and testament, as follows: (hereby revoking any and all former wills by me at any time made).

First. I direct my just debts and funeral expenses to be paid by my executors hereinafter named, out of my estate, as soon as possible after my decease.

Second. I give and devise unto C. D., of —, all that certain lot, piece or parcel of land situated in the (city) of —, in the county of — and State of —, known as, etc. (describing same briefly), with the appurtenances, to have and to hold the same, unto (him) the said C. D., his heirs and assigns forever (or, for the term of (his) natural life, and from and after the decease of the said C. D., whether such death occurs in my life time or after my death, I give and devise the said lot, piece and parcel of land, with the appur-

tenances, to E. F., his heirs and assigns forever), and in case neither the said C. D. or E. F. shall survive me, I give and devise the said lot, piece or parcel of land to G. H., etc., his heirs and assigns forever.

Third. I give and devise all that farm, piece and parcel of land, with the buildings thereon erected, situated in the (town) of —, in the county of — and State of — (and now occupied by me), described as follows, to wit: (briefly describing same), with the appurtenances, to (my son) F. B., of —, to have and to hold to (him) his heirs and assigns forever, and in case of the death of said F. B. before my decease, I give and devise said last mentioned lot of land, with the appurtenances, unto (my daughter) R. P., wife of C. P., of —), to have and to hold to (her, her) heirs and assigns forever.

Fourth. I give and bequeath to my (eldest son), J. B., the sum of — dollars, upon his attaining the age of twenty-one years, and I direct my said executor to invest from my estate the said sum as soon as convenient after my death, not exceeding six months thereafter, and to keep the same invested, and to pay to said J. B. the interest and income thereon, less all taxes and commissions chargeable thereto, until he shall become of said age. And in case my said son shall die before attaining the age of twenty-one years, leaving no descendants, I give the said sum of — dollars to my children then surviving, share and share alike, or if some of my children be then dead, leaving children, such children of a deceased child are to take the share which their parents would respectively have taken if then living.

Fifth. I give and bequeath to my son W. B. the sum of — dollars, also my gold watch and chain now worn by me.

Sixth. I give and bequeath to my daughter M. B. the sum of — dollars, also my silver cup, marked A. B.

Seventh. I do forgive unto L. M. the sum of — dollars, out of the principal sum of — dollars which he owes me upon his bond, dated —, 1—.

Eighth. I give to my granddaughters A. and B., children of my daughter C., the sum of — dollars each, to be paid to them respectively at their respective ages of twenty-one years,

or days of marriage, whichever shall first happen; the same to be put out at interest at the discretion of my said executrix, and the interest accruing thereby to be applied to their education and maintenance respectively, until their said respective ages or marriages. And in case either of them shall die before the age of twenty-one years or marriage, then I give the share of her so dying to the survivor of them. And if both of my said granddaughters shall happen to die before attaining the age of twenty-one years or marriage, then I give and bequeath the whole of the said several sums to my daughter D., if she shall then be living.

Ninth. I give to my wife, E. B. (during her life, the use of), all my plate and household goods, bedsteads, bedding and other furniture (and after her decease to remain to my son, J. B.)

Tenth. I give, devise and bequeath to my said executrix the following real and personal property, viz.: (describing same). In trust, to receive the rents and profits of said real and personal estate, and to apply the same, after paying thereout the taxes and charges thereupon, to the use and benefit of my daughter, E. B., during her life-time (or, to pay the same to my daughter, E. B., during her life-time), and after her death to apply the same to the use and benefit of (or, to pay the same to) C. M. B., her daughter,¹ and after the death of said E. B. and C. M. B., the said real and personal estate is to remain to such of my descendants as shall then be living, in equal shares to those who shall be of equal degrees of relationship to me, and those of unequal degrees of relationship to me are to take the same *per stirpes*.²

Eleventh. All the rest, residue and remainder of my real and personal estate whatsoever, which I may own or be entitled to dispose of at the time of my death, of what nature, kind and quality soever, the same may be, not hereinbefore given and disposed of, I do give and bequeath unto my said wife, E. B., her heirs, executors, administrators and assigns, to and for her and their own use and benefit absolutely (or, unto my said wife, E. B., during her life; or, so long as she shall continue to be my widow) and after her death I give

and bequeath the same to (stating person or persons). And I hereby constitute my said wife the executrix of this, my will, and I authorize and empower my said executrix to sell and dispose of at public or private sale, and at such times and in such manner, and for such sum or sums as to her, in the exercise of her best judgment, may seem most expedient, and to convey all or any part of my real and personal estate as she may consider it to be necessary to do for the payment of my said debts and of said legacies and for any other purpose or purposes whatsoever.

[*Twelfth.* I hereby direct that the legacies hereinbefore given to (naming legatees) [or, that all legacies given by this my will], shall be paid free of legacy, tax or duty.³]

In witness whereof, I have hereunto set my hand and seal this — day of —, in the year 1—.

A. B. [L. s.]⁴

The above instrument [of — sheet (or, — sheets)] was now here subscribed by A. B., the testator, in the presence of (both and) each of us, and was, at the same time (in the presence of both and each of us), declared by him to be his last will and testament; and we, at his request (in his presence, and in the presence of each other), sign our names thereto as attesting witnesses.

M. F.,

Residing No. —, — street, in the city of — (or, at the town of —), in the county of —.

G. H.,

Residing, etc. (as above).

I. J.,

Residing, etc. (as above).

Or, the will may be attested by the acknowledgment of the testator in the following form:

The above instrument [of one sheet; (or, of (two) sheets)] was, at the date thereof, declared to us by the testator, A. B., to be his last will and testament, and he then acknowledged

to each of us that he had subscribed the same: and we, at his request, sign our names thereto as attesting witnesses.⁵

M. F.,

Residing, etc. (as above).

G. H.,

Residing, etc. (as above).

I. J.,

Residing, etc. (as above).

1. Under the New York Revised Statutes express trusts may be created for any or either of the following purposes:

(1.) To sell lands for the benefit of creditors;

(2.) To sell, mortgage or lease lands for the benefit of legatees, or for the purpose of satisfying any charge thereon;

(3.) To receive the rents and profits of lands, and apply them to the use of any person, during the life of such person, or for any shorter term, subject to the rules prescribed in article first of title second of chapter first of part second of these statutes;

(4.) To receive the rents and profits of lands, and to accumulate the same, for the purposes and within the limits prescribed in said article first. (1 N. Y. R. S. 728, § 55; 7th ed. 2181.)

A trust to receive the rents and profits of land, and *pay them over* to the beneficiary is valid, within the provisions of subdivision 3 of the above cited section, authorizing the creation of trusts to receive the rents and profits of lands, and *apply them to the use* of any person. (*Leggett v. Perkins*, 2 N. Y. 297.)

2. By the words *per stirpes*, or "by the stock," is meant that the property is taken by the descendants of unequal degrees of relationship to the testator, in such portion only as their immediate ancestor would

have taken if living; *e. g.*, children of a deceased child, in a case where sons of the children are living, under this rule, would take the share which the parent would have taken if living. (4 Kent Com. 391).

3. See as to legacy and succession tax, chapter 483 (p. 820) of Laws of New York of 1885, as amended by chapter 713 (p. 921) of Laws of 1887. Also *In re* McPherson (104 N. Y. 306); *Matter of Chardevoyne* (5 Dem. 466); *Matter of Euston* (19 Abb. N. C. 227); *Matter of Miller* (5 Dem. 132; aff'd S. C., 45 Hun, 244); *Matter of Smith* (5 Dem. 90); *Matter of Woolsey* (19 Abb. N. C. 232); *Matter of Jones* (id. 221; S. C., 5 Dem. 30); *Matter of Robertson* (5 Dem. 92); *Matter of Lefevre* (id. 184); *Estate of McCready* (10 N. Y. State Rep. 606); *Matter of Miller* (110 N. Y. 216, aff'g S. C., 47 Hun, 394); *In re Cagger's Will* (111 N. Y. 343; S. C., 39 Alb. L. J. 56); *Tallmadge v. Seaman* (85 Hun, 242). See, also, article 10 of chapter 908 of Laws of N. Y. of 1896, known as the tax law, as amended by chapter 284 of Laws of 1897, and by chapters 88 and 289 of Laws of 1898, repealing chapter 399 of Laws of 1892, by which chapters 483 of Laws of 1885 and 713 of Laws of 1887 were repealed.

4. A seal is not, however, required, by the Revised Statutes of New York, to a will. (*Wuesthoff v. Germania Life Ins. Co.*, *infra*.) See provisions of these statutes on the subject of the execution of a will, note 5 to this form. But in some of the United States, *e. g.*, New Hampshire, a seal is required to a will.

The addition of a seal to a will executed in the State of New York, which is an unnecessary act, does

not change the character of the instrument, or justify treating it as in part a will and in part a deed. (*Wuesthoff v. Germania Life Ins. Co.*, 107 N. Y. 580.)

5. Every last will and testament of real or personal property, or both, is required by the Revised Statutes of New York State (pt. 2, chap. 6, tit. 1, art. 3) to be executed and attested in the following manner:

(1.) It shall be subscribed by the testator at the end of the will.

(2.) Such subscription shall be made by the testator, in the presence of each of the attesting witnesses, or shall be acknowledged by him, to have been so made, to each of the attesting witnesses.

(3.) The testator at the time of making such subscription, or at the time of acknowledging the same, shall declare the instrument so subscribed, to be his last will and testament.

(4.) There shall be at least two attesting witnesses, each of whom shall sign his name as a witness, at the end of the will, at the request of the testator. (2 N. Y. R. S. 63; 7th ed. 2285).

It is quite usual, although by no means necessary, to insert the words in brackets, in the attestation clause.

The witnesses are required to write opposite to their names their respective places of residence; and every person who shall sign the testator's name to any will by his direction, shall write his own name as a witness to the will. Whoever shall neglect to comply with either of these provisions shall forfeit fifty dollars, to be recovered by any person interested in the property devised or bequeathed, who shall sue for the same. Such omission shall not affect the validity of any will; nor shall any person liable to the penalty afore-

said be excused or incapacitated so that account, from testifying respecting the execution of such will. (2 N. Y. R. S. 63, § 41; 7th ed. 2286).

In some of the United States, three witnesses, at least, are required, but in none of them except Louisiana, more than three. In England and in some of the United States the witnesses must sign in the testator's presence and in the presence of each other, and both witnesses must be present at the time of the subscription and declaration by the testator. In every case the witnesses should be disinterested. In Louisiana women are not allowed to witness a will, except an olographic will; that is one that is entirely written, dated and signed by the hand of the testator himself. In the State of Texas the witnesses are required to be above the age of fourteen years.

By chapter 360 of the Laws of New York of 1860, it is provided that no person having a husband, wife, child or parent, shall, by his or her last will and testament, devise or bequeath to any benevolent, charitable, literary, scientific, religious or missionary society, association or corporation, in trust or otherwise, more than one-half of his or her estate after the payment of his or her debts (and such devise or bequest shall be valid to the extent of one-half and no more. (Laws of N. Y., 1860, p. 607; R. S., 7th ed., 2280.) See, also, chapter 319 of Laws of N. Y. of 1848, § 6; Birdseye's Statutes, etc., 261, and see *LeFevre v. LeFevre* (59 N. Y. 424); *Kerr v. Dougherty* (79 id. 327); *Stephenson v. Ontario Orphan Asylum* (27 Hun, 380); *Master of will of Kavanagh* (125 N. Y. 418).

By section 43 of title 1 of chapter 6 of part 2 of the Revised Statutes of New York, it is provided that if, after the making of any will, disposing of the whole estate of the testator, such testator shall marry, and have issue of such marriage, born either in his lifetime or after his death, and the wife or the issue of such marriage shall be living at the death of such

testator, such will shall be deemed revoked, unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation shall be received. (N. Y. Rev. Stat. 64; 7th ed. 2286.)

By section 44, *id.*, a will executed by a married woman shall be deemed revoked by her subsequent marriage. (*Id.*)

By section 49, *id.*, as amended by chapter 22 of Laws of 1869, it is provided that whenever a testator shall have a child born after the making of a last will, either in the life time or after the death of such testator, and shall die leaving such child, so after born, unprovided for by any settlement, and neither provided for nor in any way mentioned in such will, every such child shall succeed to the same portion of such parent's real and personal estate as would have descended or been distributed to such child if such parent had died intestate, and shall be entitled to recover the same portion from the devisees and legatees, in proportion to and out of the parts devised and bequeathed to them by such will. (Laws of N. Y., 1869, p. 40; 7th ed. R. S. 2287.)

By sections 50 and 51, *id.*, it is provided that if any person shall be a subscribing witness to the execution of any will wherein any beneficial devise, legacy, interest or appointment of any real or personal estate shall be made to such witness, and such will cannot be proved without the testimony of such witness, the said devise, legacy, interest or appointment shall be void so far only

as concerns such witness or any claiming under him; and such person shall be a competent witness, and compellable to testify respecting the execution of the said will, in like manner as if no such devise or bequest had been made. But if such witness would have been entitled to any share of the testator's estate, in case the will was not established, then so much of the share that would have descended or have been distributed to such witness, shall be saved to him, as will not exceed the value of the devise or bequest made to him in the will, and he shall recover the same of the devisees or legatees named in the will, in proportion to and out of the parts devised and bequeathed to them. (2 N. Y. Rev. Stat. 65; 7th ed. 2287.)

By section 71 of the same chapter it is provided that the term "will," as used in that chapter, shall include all codicils as well as wills. (*Id.* 68; 7th ed. 2288.)

Restrictions upon the disposition of property by will are contained in the statutes of other States, *e. g.*: Colorado, where a married man is not allowed by will to deprive his wife of more than one-half of his property, nor can a married woman, without her husband's consent in writing, will more than one-half of her property away from her husband. Connecticut, where no devise or bequest can be given to a subscribing witness, and the subsequent marriage, or birth of a child operates as a revocation of the will, unless these contingencies are provided for therein. District of Columbia, where all devises of lands to any minister, public teacher or preacher of the gospel as such, or to any religious sect, order or denomination, etc., are void, unless made at least one calendar

month before the testator's death. Iowa, where a disposition by will of property allowed as a homestead, or otherwise given by law to a wife and family as privileged property, are prohibited. Kansas, where a married person cannot, without the consent of the husband or wife, dispose of more than one-half of his or her property. Maine, where a posthumous child not provided for takes same share as he would if the father had died intestate. So a child or issue of a deceased child not being a devisee in the will, unless it appears such omission was intentional, or not occasioned by mistake, or that such child or issue had already received a due proportion of the estate. Massachusetts, where a devise or legacy to a subscribing witness, or to the husband or wife of such witness, is void, unless there are three other competent subscribing witnesses to the will. New Hampshire, where a subscribing witness cannot take a beneficial devise or legacy given him by the will, unless there are three other subscribing witnesses to the will, and he shall be a competent witness thereto. New Jersey, where a posthumous child takes the same share to which he would have been entitled if no will had been made, unless the contrary appears from the will. New Mexico, where persons becoming heirs, and those receiving legacies by will cannot be witnesses to the will, and a person having no direct heirs, although he may have legal heirs, may constitute a stranger as his heir, provided such stranger be not an infamous or stupid person. Pennsylvania, where a bequest to a charity within one month of the testator's death is void. Rhode Island, where a beneficial interest cannot be devised or bequeathed to a witness to the will.

While holographic wills are not excepted from the terms of the statute requiring and prescribing the method of publication, in case of such a will, criticism of the terms and manner of what is claimed to be a sufficient publication need not be so close or severe as when the question as to whether the testator knew that he was executing a will, depends solely upon the fact of publication. (*Matter of Application of Beckett*, 103 N. Y. 167.)

In any case a substantial compliance with the statute is sufficient; the necessary information to the subscribing witnesses, as to the character of the instrument, may be given in any manner which conveys to their minds the testator's consciousness that it is a will. (*Id.*)

See, also, *In re Hunt* (110 N. Y. 278, aff'g S. C., 42 Hun, 434); *In re Mackay* (id. 611, aff'g S. C., 44 id. 571); *Matter of Austin* (45 id. 1); *Jones v. Jones* (42 id. 563); *Matter of Van Gieson* (47 id. 5); *Matter of Dagger* (id. 127); *Matter of Phillips* (98 N. Y. 267); *Matter of Lapham* (37 Hun, 15), among recent cases relating to execution of wills.

See *In re McGraw's Estate*; *In re Fisk's Estate* (New York Court of Appeals, 1888; 39 Alb. L. J. 115; 111 N. Y. 66); as to the validity of devise to corporation.

A will is defined to be the disposition of one's property, to take effect after death. (*Coffman v. Coffman*, Va. Sup. Court of Appeals, 39 Alb. L. J. 265.)

See, also, *Riggs v. Palmer* (115 N. Y. 506), that one who commits murder to obtain the benefits of a provision of a will in his favor, known by him to be contained in it, thereby forfeits the benefits of the provision.

No. 1098.

Will appointing executor or executors, and leaving the property to be distributed under the statute of distributions.

I, A. B., of the (town) of —, in the county of — and State of (New York), do hereby make, publish and declare this my last will and testament, as follows, that is to say:

I hereby nominate and appoint C. D., of the (town) of —, in the county of —, and State aforesaid (and E. F., of etc.), executor (or, executors) of this, my last will and testament, and I hereby direct him to distribute my personal property, after paying all just debts and expenses, to and amongst those entitled thereto, according to the laws of the State of (New York) regulating the distribution of the personal estate of those who die intestate.

In witness whereof, I have hereunto subscribed my name, this — day of —, in the year of our Lord one thousand eight hundred and —.¹

A. B. [L. S.]

(Attestation, as in form No. 1097.)

1. See notes to form No. 1097.

A paper in the form of a will and purporting to be one, the only provisions of which are that A., one of the testator's sons, shall have no part in his estate at his death, giving as a reason therefor that said A. has inherited from his mother a sum equal probably to that which testator's estate will pay to his other legal heirs,

and which names no executors, is not a will, as it does not necessarily imply a disposition of testator's estate to his other heirs, and the property descends under the statute of descents and distributions, including A., the son mentioned. (Coffman v. Coffman, Va. Ct. of Appeals, 1888, 39 Alb. L. J. 265.)

No. 1099.

Form of will, containing provisions for widow, in fulfillment of ante-nuptial contract, and in lieu of dower and trust provisions, etc.

I, A. B., of the city of —, do make and publish my last will and testament, follows:

FIRST. I direct my executors, immediately after my decease to pay my beloved wife, F. B., the sum of — thousand dollars, in bonds of the United States of America, of

the five per cent loan, under the act of congress, approved March 3, 1864, commonly known as ten-forty bonds, at par, in performance of the ante-nuptial contract made by and between me and the said F., bearing date the — day of —, one thousand — hundred and —, whereby I agreed, that if she should survive me as my widow, my executors or administrators should immediately after my death pay to her — thousand dollars in the first mortgage bonds of the — and — railroad company, at par; and she agreed to waive and release all dower in my real estate, and all right, title and interest in and to my personal estate, except such sum of — thousand dollars of bonds. This direction of bequest is on condition that my said wife do accept the same as performance of my part of said ante-nuptial contract and in lieu of dower in any and all real estate of which I may have been seized at any time during my marriage with her, and of all claim upon or share in the personal estate of which I may die possessed, except as hereinafter expressly bequeathed to her.

I also give, devise and bequeath to my said wife F., the house and lot, number — — —, in the city of —, with the appurtenances, and also the statuary therein contained for and during her natural life. I also give and bequeath to her absolutely, all the furniture, pictures and other household articles which may be in or appurtenant to said house at the time of my decease, including books, musical instruments and all other chattels of that kind, but excepting the portraits of my mother and my deceased wife, which two portraits I give to my grandson, C. B., son of my son, A. B., and upon the decease of my said wife, I give, devise and bequeath the said statuary to my said grandson C., and the said house and lot to my said son A. B., in fee. I also give and bequeath to my said wife two carriages and one pair of carriage horses and the harness appurtenant thereto to be selected by her from those I may own at the time of my decease.

SECOND. I give and bequeath unto my — daughters, P. J., wife of J. C., E., wife of W. T., M. L., widow of H. C., deceased, S., wife of D. T., and M. A., widow of N. B., de

ceased, for their own use, — thousand dollars of the registered bonds of the L. S. and M. S. Railway Company, of — thousand dollars each, dated December 1, 1873, payable December 1, 1903, being part of an issue of not exceeding twenty-five millions dollars secured by a mortgage on the railroad of said company to the Union Trust Company of New York, dated October 15, 1873; also — thousand dollars of the consolidated mortgage bonds of the N. Y. and H. Railroad Company, payable the 1st of May in the year 1900, with interest semi-annually at seven per cent. per annum, and secured by a mortgage on the railroad of said company to the Union Trust Company of New York, dated the 1st of May in the year 1872, making together — thousand dollars of bonds, which I direct to be divided by my executors among my five daughters before named, in equal shares, as soon as can conveniently be done after my decease.

THIRD. I give and bequeath unto the trustees herein-after appointed — thousand dollars of ten-forty bonds of the United States of America of the five per cent loan described in the first clause of this will, in and for the uses and purposes hereinafter set forth, viz. : In trust to set apart and hold — thousand dollars of said bonds, and receive the interest thereon as it comes due, and pay the same over to my daughter E. A., wife of D. A., for and during her natural life, for her separate use and upon her separate receipt, it being my will that she shall not have power to anticipate such income, nor to transfer or dispose of her right to receive the same, or any part thereof. And upon the decease of my said daughter, I give and bequeath the last mentioned — thousand dollars of bonds unto her children who may survive her, and the lawful issue of any of her children who may have died before her, such issue to take the share or shares which their parent or parents would have taken if living, and in default of her leaving any lawful issue her surviving, I give and bequeath the last mentioned bonds, after her decease, to my residuary legatee, hereinafter named. The said trustees are hereby directed to set apart, out of the bonds in this clause bequeathed to them, the further sum of

— thousand dollars of such bonds, and to hold the same in trust, to receive the interest thereon, and pay the same over as it accrues and is received by them, unto my daughter E. O., wife of G. O., for and during her natural life upon her separate receipt, and for her separate use; it being my will that she shall not have power to anticipate such income, or to transfer or dispose of her right to receive the same or any part thereof. Upon the decease of my said daughter E., I give and bequeath the last mentioned — thousand dollars of bonds unto my residuary legatee. The said trustees are hereby directed to set apart, out of the bonds in this clause bequeathed to them, the further sum of — thousand dollars of such bonds, and to hold the same in trust to receive the interest thereon, and pay the same over as it accrues and is received by them, unto my daughter, C. L., wife of G. L., for and during her natural life, upon her separate receipt, and for her separate use. It being my will that she shall not have power to anticipate such income, nor to transfer or dispose of her right to receive the same or any part thereof. Upon the decease of my said daughter C., if she shall have children surviving, I direct that the last mentioned — thousand dollars of bonds be divided by the said trustees into as many shares as there shall be of such surviving children, and that the said trustees set apart one of said shares for each of said children, and hold such share in trust to receive the interest thereon, and apply the same to the use of said child during his or her natural life, paying over such income to such child after his or her having attained the age of twenty-one years. And I direct that on the death of each of said children, the principal of the share held in trust for him or her shall go in absolute ownership as he or she may by will direct, and in default of such will, to his or her next of kin.

But in case the said C. shall leave her surviving children and also lawful issue of any deceased child or children, such issue shall be included in the division as representing their deceased parents, and the share which would have been set apart in trust for the benefit of the parent, if living, shall be paid to such issue. And should the said C. leave no chil-

dren her surviving, the last mentioned — thousand dollars of bonds shall be paid over to the issue of her deceased children, should there be any, they to share *per stirpes*, and should there be no such issue, said bonds shall go to her next of kin, as if she had died intestate, owning such bonds. The said trustees are hereby directed to set apart the remaining — thousand dollars of the bonds in this clause bequeathed to them, and to hold the same in trust to receive the interest thereof and apply the same to the maintenance and support of my son, B. B., during his natural life, at such times and in such manner as they shall deem best for his interest. And I authorize said trustees, in their discretion, instead of themselves making the application of said interest money to his support, to pay over from time to time to my said son for his support, such portions as they may deem advisable, or the whole of the interest of said bonds. But no part of such interest is to be paid to any assignee of my said son, or to any creditor who may seek by legal proceedings to obtain the same; and in case my said son should make any transfer or assignment of his beneficial interest in said bonds, or the interest thereof, or incur the same, or attempt so to do, the said interest of said bonds shall thereupon cease to be applicable to his use, and shall thenceforth, during the residue of his natural life, belong to my residuary legatee. Upon the decease of my said son, B. B., I give and bequeath the last mentioned — dollars of bonds to my residuary legatee.

FOURTH. I give and bequeath unto my sister, M. B., — dollars per annum during her natural life. To my niece, P. B., — hundred dollars per annum during her natural life; and to R. L. and her daughter C., during their joint lives, and to the survivor of them, during her natural life, the sum of — hundred dollars per annum, and I direct that the annuities in this fourth clause provided for, do commence from the time of my decease, and the first payment thereof be made in six months thereafter, and that said annuities be paid half-yearly thereafter.

FIFTH. I give and bequeath unto my brother, R. B., etc. (here follow certain bequests of bonds),

SIXTH. In case I should part with any of the bonds here-
inbefore bequeathed either to legatees or trustees ; or in case
for any reason I should not have on hand, at the time of my
decease, a sufficient amount of each description of bonds to
fulfill all of the bequests in this will mentioned, I direct my
executors to supply the deficiency by purchasing with the
general funds of my estate the necessary amount of the
kind of bonds which may be lacking, and to apply the bonds
so purchased to the fulfillment of such bequests. And if
any of the bonds which I have bequeathed in trust should
be paid off before the termination of the trust upon which
they may be held, I direct that the trustees reinvest the
proceeds thereof in other bonds of the United States of
America, and hold the same upon the same trusts upon
which they held the bonds paid off ; and that the same limi-
tations of remainders do apply to such substituted bonds.
The interest upon all the bonds in this will bequeathed,
either to legatees or in trust, shall be apportioned up to the
date of my decease, and so much thereof as shall have ac-
crued up to that date, though not due or payable, shall,
when collected, belong to my residuary legatee.

SEVENTH. All legacy and succession taxes which may be
payable in respect of the bequests and devises in this will
contained, I direct to be paid out of my residuary estate ;
but should any tax be imposed upon the income of the
bonds bequeathed in trust, or upon such bonds or the pro-
ceeds thereof while held in trust, they are to be borne by
the respective trust estates to which such bonds may be-
long, and to be deducted from the income payable to the
several beneficiaries.

EIGHTH. All the rest, residue and remainder of the prop-
erty and estate, real and personal, of every description, and
wheresoever situated, of which I may be seized or possessed,
or to which I may be entitled at the time of my decease, I
give, devise and bequeath unto my son, A. B., his heirs,
executors, administrators and assigns, to his and their own
use forever.

NINTH. I constitute and appoint my said son, A. B., and
my grandson, C. B., son of the said A. B., and also, when

he shall become of age, my grandson, F., another son of the said A. B., and also my before named nephew S. B., executors of this my will, and trustees of the several trust estates hereinbefore created. And should any of the said trustees refuse or be unable to act as such, or resign their trusteeship, the said trusts, together with the estates and powers hereinbefore granted to the trustees, shall vest in those of said trustees who shall act. And should any of the said trustees die, the said trust estates, trusts and powers shall vest in the survivors and survivor of them. But it is my will that no commissions or compensation shall be charged to my estate or to any of the said trust estates, or to any of the persons for whose benefit the said trusts are created, by said executors or trustees for their services as such executors and trustees; it being my intention that they shall serve as such executors and trustees without any compensation whatever, and they are severally appointed on that condition. And should either of them refuse to qualify and act, or to continue to serve as such executor or trustee without compensation, his appointment herein contained shall be void and of no effect. And should my nephew, S. B., refuse to act as such executor and trustee without compensation, the bequest to his wife hereinbefore contained shall become void, and the bonds bequeathed to her shall revert to my residuary estate.

TENTH. It is my will that in case any direction or provision of this my will should be held illegal or void or fail to take effect for any reason, no other part of this my will shall be thereby invalidated, impaired or affected, but this my will shall be construed and take effect in the same manner as if the invalid direction or provision had not been contained therein. And should any of the legacies herein lapse, the same shall go to my residuary legatee before named.

LASTLY. I hereby revoke all wills and codicils by me at any time heretofore made.

In witness whereof I have set my hand and seal to this my last will written on — — pages of paper, at the city of —, the — day of —, in the year one thousand —

hundred and ——. The words "five" on the first line of the fifth page and "three" on the first line of the eighth page, written over erasures.¹

A. B. [SEAL.]

Signed, sealed, published and declared by A. B., the testator, as and for his last will and testament in the presence of us, who, at his request, and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

C. D. — street, N. Y.

E. F. — street, N. Y.

G. H. — House, N. Y.

J. K. — street, N. Y.

1. See notes to form No. 1097.

No. 1100.

A clause which may be inserted in a will appointing a guardian, etc.

And I hereby commit the guardianship of all my children until they shall respectively attain the age of twenty-one years, unto my said wife, during her life, if she shall so long continue my widow; and from and after her decease or second marriage, unto my trusty and much esteemed friend, A. B. (his executors and assigns), and do hereby declare, that the expenses of the maintenance and education of my said children, until they shall attain the age aforesaid, or become entitled to the sum or sums of money hereby provided for their benefits respectively, shall be paid and borne by my said wife, by and out of the moneys and estate given and bequeathed to her in and by this my will.¹

1. It is provided by section 1 of title 3 of chapter 1 of part 2 of the New York Revised Statutes, as amended by chapter 454 of the Laws of New York of 1888, that every father, whether of full age or a minor, of a child likely to be born, or of any living child under the age of twenty-one years, and unmarried, may, by his deed or last will duly executed, dispose of the custody and tuition of such child during its minority or for any less time, to any person or persons in possession or remainder. But if the mother of such child survive the father for one year, whether such appointment be now made or shall hereafter be made by the father,

she may, after the lapse of such year, notwithstanding such appointment by the father, by her deed or last will duly executed, dispose of the custody and tuition of such child during its minority, or for any less time, to any person or persons in possession or remainder, and she may make the same appointment at any time if the father dies without having executed his said right of appointment, and section 2851 of the Code of Civil Procedure shall apply on any such appointment. (Laws of N. Y. of 1888, p. 746.)

See, as to the effect of such appointment, sections 2, 3, 20 and 21 of same title; and further as to guardianship, see sections 2851-2860 of New York Code of Civil Procedure, and *Hagerty v. Hagerty* (9 Hun, 175); *In re Reynolds* (11 id. 41); *In re Tayler* (3 Redf. 259); *Matter of Schroeder* (65 How. 194); *Matter of King* (42 Hun, 607); *Wuesthoff v. Germania Fire Ins. Co.* (107 N. Y. 580); *Mackay v. Fullerton* (4 Den. 153); *Matter of King* (2 How. Pr. N. S. 307).

No. 1101.

Clause in a will, that sums advanced to children shall be regarded as parts of their portions of estate.

Provided, always, and I do hereby declare, that in case I shall, in my life time, advance and pay to any of my children, either sons or daughters, any sum or sums of money, for his or their benefit or advancement in the world, or otherwise, and shall signify the same in writing under my hand, then if any such sum or sums shall be equal to the share or shares of such child or children respectively, of and in the premises, etc., by me hereby devised or bequeathed for their respective benefits, such sum or sums so paid or advanced shall in that case be accounted in full satisfaction of the share or shares of such child or children respectively, in the said estate and premises; but if such advanced sum or sums shall be less than the share or shares of such child or children respectively, of and in the said premises, etc., then such advanced sum or sums shall be accounted as part only of the share or shares of such child or children therein, and in that case such child or children shall not receive or be entitled to any share or interest of, or in such parts of the said premises, etc., which shall have been paid or advanced to him, her or them, for the purposes aforesaid, until the other or others of each child or children shall have received as much of the said premises, etc., as shall make his, her or their share or shares thereof,

equal to what shall have been so paid or advanced to or for the benefit, advantage or preferment of such child or children respectively, to the end and intent that the said premises, etc., may be equally divided among all such children, share and share alike.¹

1. As to effect of advancement upon the division of real or personal property, under the New York Statutes of Descent and Distribution, see 1 N. Y. Rev. Stat. 754, § 23; 2 id. 97, § 76; 7th ed. 2213, 2305; and see, also, *Lawrence v. Lindsay* (68 N. Y. 108); *Beebe v. Estabrook* (79 N. Y. 246, aff'g S. C., 11 Hun, 523); *Camp v. Camp* (18 Hun, 217); *Verplanck v. De Went* (10 id. 611); *Matter of Morgan* (104 N. Y. 74); *Arnold v. Haronn* (43 Hun, 278); *De Caumont v. Bogert* (36 id. 382); *Clark v. Kingsley* (37 id. 246); *Matter of Robert* (111 N. Y. 372), among other recent cases.

No. 1102.

Devise to wife in lieu of dower, etc., remainder to children.

Item. I give and devise unto my said wife, all that lot, piece or parcel of land situated, etc. (briefly describing property), with the lands and hereditaments thereunto belonging, and the rents, issues and profits thereof, for and during the term of her natural life; and from and after the decease of my said wife, I give and devise the said piece or parcel of land, lands, and hereditaments unto such child or children as I shall leave or have living at the time of my decease, and to their heirs and assigns forever, as tenants in common; and if I shall have no such child or children living at the time of my decease, then I give and devise, etc. Which said legacy given to my said wife as aforesaid, I hereby declare is intended to be, and is so given to her, in full satisfaction and recompense of, and for her dower and thirds, which she may, or can in any wise claim or demand out of my estate.¹

Item. I give and devise all the rest and residue of my estate, both real and personal (not hereinbefore by me given and bequeathed), unto, etc.

1. It is provided by section 13 of title 8 of chapter 1 of part 2 of Revised Statutes of New York, that if lands be devised to a woman, or a pecuniary or other provision be made for her by will, in lieu of her dower, she shall make her election whether she will take the land so devised, or the provision so made, or whether she will be endowed of the

lands of her husband. (N. Y. R. S. 741; 7th ed. 2198.)

By section 14 of same title, it is provided that when a woman shall be entitled to an election, under section 13 above cited, she shall be deemed to have elected to take such devise or pecuniary provision, unless within one year after the death of her husband she shall enter on the lands to be assigned to her for her dower, or commence proceedings for the recovery or assignment thereof. (1 N. Y. R. S. 742; 7th ed. id.)

A devise of the testator's whole estate to his widow for life, with remainders over, is not a provision in lieu of dower, unless such intention is to be implied from other terms of the will; and the widow may take one-third of the estate as doweress, and the residue as devisee. (Lewis v. Smith, 9 N. Y. 502.)

That a devise to the widow was intended to be in lieu of dower may be inferred from the provisions of the will; as where it is inconsistent with the claim of dower. But the incongruity must be plain. (Jackson v. Churchill, 7 Cow. 287.)

Where a testator devised all his real and personal estate to his wife during her life or so long as she should remain his widow, with remainder to his children, and after his death the widow entered and occupied under the will for several years, and then married a second husband, *held*, that she was entitled to dower. (Bull v. Church, 5 Hill, 206; *aff'd*, S. C., 2 Den. 430.)

When a testamentary disposition

in favor of the wife, by the husband, is not expressed to be in lieu of dower, she is not put to her election, unless the terms and provisions of the will be totally inconsistent with her claim. (*Lasher v. Lasher*, 13 Barb. 106.)

Testator gave the use of his dwelling house and furniture and an annuity to his wife for life. The bequest concluded as follows: "This provision to be accepted by my wife in lieu of her dower right *and distributive share in my estate*; she to make her election whether she accepts this provision of my will within sixty days from the time of proving the same." The residue of his estate was given to his nephew. The widow rejected the provision. *Held*, that she was entitled, not only to her dower, but also to a legacy by implication equal to the amount of the personal estate which she would have received if testator had left no will. (*In re Vowers' Will*, N. Y. Ct. of App., June 4, 1889; 40 Alb. L. J. 71; 113 N. Y. 569.)

See, also, *Jones v. Fleming* (104 N. Y. 418, *rev'g* S. C., 37 Hun, 227); *Akin v. Kellogg* (39 Hun, 252; S. C., 48 id. 459); *Hathaway v. Hathaway* (37 id. 265); *White v. Kane* (51 N. Y. Super. Ct. 295); *Matter of Zahrt* (94 N. Y. 605); *Wetmore v. Peck* (66 How. Pr. 54); *Asche v. Asche* (113 N. Y. 232, *aff'g* S. C., 47 Hun, 285); *Konvalinka v. Schlegel* (104 N. Y. 125, *aff'g* S. C., 39 Hun, 451), construing the statutory provisions on this subject, and generally as to dower right, see note 1 to form No. 196.

No. 1103.

Form of codicil to a will.

Whereas, I, A. C., of, etc., have made my last will and testament in writing, bearing date on — day of —, 1—, and have thereby, etc. (reciting provisions as may be necessary). Now, I do by this my writing, which I hereby declare to be a codicil to my said will, to be taken as a part thereof, will and direct as follows: (*)

First, I give and bequeath to my niece, M. S., one gold watch, one large diamond ring and one silver coffee-pot.

And, whereas, in and by my last will and testament, I have given and bequeathed to my daughter-in-law, G. H., the sum of — dollars, I do hereby order and declare, that my will is that only the sum of — dollars be paid unto her, in full of the said legacy I have as aforesaid given and bequeathed unto her; and that the remaining part of said legacy be given and paid to my nephew, E. G.

And lastly, it is my desire that this my present codicil be annexed to, and made a part of my last will and testament, to all intents and purposes.

In witness whereof I have hereunto set my hand and seal this — day of —, in the year 1—.¹

A. B. [L. S.]

(Attestation clause as in form No. 1097, inserting therein after the word "be" the words "a codicil to").

(Signatures of witnesses and residences, as in form No. 1097.)

1. By section 71 of article 3 of title 1 of chapter 6 of the New York Revised Statutes, the term "will," as used in that chapter, is to include all codicils, as well as wills. (N. Y. Rev. Stat. 67, 68; 7th ed. 2288.)

See also note 1 to form No. 1097, as to execution of wills, and see Seymour v. Van Wyck (6 N. Y. 120); Caw v. Robertson (5 id. 125); Howland v. Union Theological Seminary (5 N. Y. 193, rev'g S. C., 3 Sandf. Super. Ct. 82); Leaycraft v. Simmons (3 Bradf. 35); Darley v. Darley id. 481); Newcomb v. Webster (39 Alb. L. J. 440; 113 N. Y. 191.)

No. 1104.**Another form of codicil to will.**

I, A. C., of, etc., do hereby make and publish the following codicil to my last will and testament bearing date on the — day of —, 1—.

(Proceed as in last form, No. 1103, from (*) to end.)¹

A. C. [L. S.]

(Attestation, signatures, etc., of witnesses, as in last form.)

1. See note to last form, No. 1103.

No. 1105.**Form of renunciation by executor.**

(N. Y. Code Civ. Proc., § 2639.)

Whereas, I, A. B., of the (town) of —, in the county of — and State of New York, have been, in and by the last will and testament of C. D., late of the (town) of —, in the county of — and State aforesaid, now deceased, appointed executor (or, one of the executors) of the said last will and testament (*), but being unwilling to take upon myself the burden of the execution thereof:

Therefore, know all men by these presents, that I, the said A. B., have renounced, and by these presents do renounce, all claim to the execution of the said will as executor (or, as one of the executors) thereof, and I hereby request the surrogate of the county of — to file this, my renunciation, and record the same as provided by law.

Dated at —, this — day of —, 1—.¹

Signed in the presence of

A. B.

E. F.

(Acknowledgment or proof, as in forms Nos. 89, etc.)

1. The provisions of section 2639 of the New York Code of Civil Procedure are as follows:

“§ 2639. A person, named as executor in a will, may renounce the appointment by an instrument in writing, signed by him, and acknowledged or proved, and certified, in like manner as a deed to be recorded in the county, or attested by one or

more witnesses, and proved to the satisfaction of the surrogate. Such a renunciation may be retracted by a like instrument, at any time before letters testamentary, or letters of administration with the will annexed, have been issued to any other person in his place; or, after they have been so issued, if they have been revoked, or the person to whom they were is-

sued has died, or become a lunatic, and there is no other acting executor or administrator. Where a retraction is so made, letters testamentary may, in the discretion of the surrogate, be issued to the person making it. An instrument specified in this section must be filed and recorded in the surrogate's office.

No. 1106.

Retraction of renunciation by executor.

(N. Y. Code Civ. Proc., § 2639.)

As in last form No. 1105 to (*) and from thence as follows:
And, whereas, I did by an instrument in writing, dated —, 1 —, executed and acknowledged by me (or, executed by me, and proved by the subscribing witness thereto), and recorded in the surrogate's office of — county, on the — day of —, 1 —, renounce such appointment, I do hereby retract such renunciation pursuant to the statute in such case made and provided.¹

Dated —, 1 —.

A. B.

Signed in presence of

I. J.

(Acknowledgment, etc., as in last form.)

1. See note 1 to last form, No. 1105, v. Parker (19 Hun, 55); Trow v. and see Codding v. Newman (3 T. & Shannon (59 How. Pr. 214). C. 364; aff'd, 63 N. Y. 639); Staunton

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ADDENDA.

Insert in form No. 783, page 876, at end of covenant for renewal, as follows: provided, however, that no such renewal lease shall be granted, unless said C. D. shall give notice, in writing, on or before the — day of —, 1—, to said A. B. that he desires to take such renewal lease; and provided further, that the covenants, conditions, agreements and provisions herein contained, to be observed by the party of the second part, shall have been performed, fulfilled and kept by (him) (or, insert other conditions of such renewal as may be required.)



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